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Bloom, James S.

Monterey, California. Naval Postgraduate School

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# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**THE USE OF STATE AND LOCAL LAW ENFORCEMENT  
FOR IMMIGRATION ENFORCEMENT UNDER FEDERAL  
AUTHORITY 287(G): A CASE STUDY ANALYSIS**

by

James S. Bloom

March 2009

Thesis Advisor:  
Second Reader:

Robert Bach  
David Brannan

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**THE USE OF STATE AND LOCAL LAW ENFORCEMENT FOR IMMIGRATION  
ENFORCEMENT UNDER FEDERAL AUTHORITY 287(G): A CASE STUDY  
ANALYSIS**

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Submitted in partial fulfillment of the  
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**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL  
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## **ABSTRACT**

The issue of 12-20 million illegally-present foreign nationals within the United States brings with it a number of homeland security questions and concerns. The threat of terror organizations utilizing our porous borders or lack of enforcement against us is highly probable. However, in order to deal with the issue of illegal immigration and the homeland security threat that is attached to this problem, the country must develop a strategy that is efficient and effective for all.

One possible strategy for combating illegal immigration is the utilization of section 287(g) of the Immigration and Nationality Act, which grants, under limited conditions, law enforcement agencies the authority to use immigration-related information to advance local policing efforts. However, the issue of state and local enforcement of immigration-related matters has become highly contentious. Much has been written about it, but little data has been collected on what these enforcement programs actually do, rather than what supporters and opponents hope or fear they will do.

The purpose of this thesis was to examine several situations in which state and local agencies have implemented the 287(g) program. While it is true the use of this authority as a strategy has many factors and elements that must be reviewed prior to further implementation, it is in reality a necessary partnership and prudent measure to keep our nation and our communities safe. The 287(g) program should be strongly considered a national strategy for combating illegal immigration.



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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	THE PROBLEM OF ILLEGAL IMMIGRATION FOR HOMELAND SECURITY .....	1
B.	PURPOSE.....	2
C.	BACKGROUND .....	3
D.	RESEARCH DESIGN.....	13
II.	THE HOMELAND SECURITY AND PUBLIC SAFETY CONCERNS THAT SURROUND ILLEGAL IMMIGRATION.....	17
III.	REVIEW OF OPINIONS REGARDING ILLEGAL IMMIGRATION ENFORCEMENT .....	33
IV.	INVOLVING STATE AND LOCAL LAW ENFORCEMENT AGENCIES: TITLE VIII, 287(G) PROGRAM.....	43
A.	287(G) HISTORY .....	43
B.	AUTHORIZATION FOR STATE AND LOCAL LAW ENFORCEMENT OFFICERS TO ENFORCE IMMIGRATION LAW..	45
C.	CONSTITUTIONAL BACKGROUND.....	46
D.	APPLICATION OF INA TITLE VIII, SECTION 287(G) AUTHORITY AT STATE AND LOCAL AGENCIES .....	48
V.	CASE STUDY ANALYSIS.....	53
A.	RESEARCH OVERVIEW .....	53
B.	SURVEY FORMAT FOR THE 287(G) CASE STUDY.....	53
C.	COLLIER COUNTY SHERIFF'S OFFICE CASE STUDY .....	54
1.	Internal Challenges.....	57
2.	External Challenges .....	59
3.	Stakeholders .....	59
4.	The CATF Program from October 2007 through December 2008 .....	61
a.	<i>Corrections</i> .....	61
b.	<i>Investigations</i> .....	62
c.	<i>Prior Criminal Histories</i> .....	63
d.	<i>Jail Population</i> .....	63
5.	Detainer/Deportation Examples.....	64
6.	Summary .....	69
D.	MECKLENBURG COUNTY SHERIFF'S OFFICE CASE STUDY .....	71
1.	Internal Challenges.....	73
2.	External Challenges .....	74
3.	Stakeholders .....	74
4.	Outcomes and Descriptive Statistics of the MCSO 287(g) Program .....	75
5.	Summary .....	76

E.	ALABAMA DEPARTMENT OF PUBLIC SAFETY .....	77
1.	Internal Challenges.....	78
2.	External Challenges .....	79
3.	Stakeholders .....	79
4.	The Outcomes and Descriptive Statistics of the Alabama Department of Public Safety Program–2003 through 2008.....	80
5.	Detainer/Deportation Examples.....	80
6.	Summary .....	82
F.	ANALYSIS .....	83
VI.	CONCLUSION AND RECOMMENDATIONS .....	85
A.	CONCLUSION .....	85
B.	RECOMMENDATIONS .....	87
C.	FINAL REMARKS.....	92
	APPENDIX A.....	93
	APPENDIX B.....	97
	APPENDIX C.....	107
	APPENDIX D.....	125
	APPENDIX E.....	133
	APPENDIX F.....	135
	APPENDIX G.....	137
	APPENDIX H.....	139
	APPENDIX I.....	141
	APPENDIX J.....	143
	APPENDIX K.....	145
	APPENDIX L.....	147
	APPENDIX M.....	149
	APPENDIX N.....	153
	LIST OF REFERENCES.....	155
	INITIAL DISTRIBUTION LIST .....	159

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## **I. INTRODUCTION**

### **A. THE PROBLEM OF ILLEGAL IMMIGRATION FOR HOMELAND SECURITY**

The September 11, 2001, attacks on the Pentagon and the World Trade Center brought to the forefront the need to evaluate our nation's vulnerabilities and overall security. One area of susceptibility that required immediate review and attention was illegal immigration and the security risks associated with those who were entering or currently residing in the country illegally outside the law.

Subsequently, the original National Strategy for Homeland Security advised that many homeland security activities, such as border security, are properly accomplished at the federal level. Additionally, many believed that immigration enforcement was the sole responsibility of the federal government. However, according to the Department of Homeland Security, Office of Immigration Statistics, the number of illegal immigrants in this country has been growing steadily, from an estimated 8.5 million in 2000 to 10.5 million in 2005 and nearly 11 million by January 2006.<sup>1</sup> Current estimates place the number of illegal foreign nationals in the United States between 12–20 million.<sup>2</sup> This staggering number is a direct result of our nation's porous borders, approximately 4,000 miles of border with Canada and 2,000 miles of border with Mexico, and our nation's inability to establish an effective national immigration strategy and enforcement strategy that thoroughly investigates, detains, and removes those who have violated immigration law.

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<sup>1</sup> Michael Hoefer, Nancy Rytina, and Bryan C. Baker, Population Estimates, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007," Office of Immigration Statistics, September 2008.

<sup>2</sup> Robert Justich and Betty Ng, "The Underground Labor Force is Rising to the Surface," Bear Stearns, January 3, 2005.

Homeland Security Secretary Michael Chertoff advised that illegal immigration poses an increasing threat to our security and public safety.<sup>3</sup> In 2006, ICE Assistant Secretary Julie Myers advised that U.S. prisons and jails are estimated to book roughly 630,000 foreign-born nationals on criminal charges annually, and too often, the criminal aliens among this population are not removed from the country upon completion of their sentences. Instead, they are released back into U.S. society.<sup>4</sup> Additionally, there are more than 590,000 aliens at large in this country who are fugitives that have been ordered removed by an immigration judge. This number is increasing at a rate of more than 40,000 each year.<sup>5</sup> Assistant Secretary Myers advised that a substantial portion of the illegal aliens in this country is visa violators, with an estimated 165,000 new visa violations occurring annually.<sup>6</sup>

Responsibility for the growing number of violators residing in U.S. communities well away from the border is no longer solely a federal task. Since 1996, Congress gave federal authorities the ability to work with state and local officials under Title VIII, Section 287(g) of the Immigration and Nationality Act to utilize state and local law enforcement personnel as a force multiplier for immigration enforcement.

## **B. PURPOSE**

The purpose of this thesis is to examine how this responsibility is shared by all levels of government—federal, state and local—and how the actions by various law enforcement agencies complement and strengthen each other. The cooperation among levels of government is hotly contested. However, I will argue in this thesis that the federal government alone is incapable of handling the

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<sup>3</sup> U.S. Immigration and Customs Enforcement, Press Release, “Department of Homeland Security Unveils Comprehensive Immigration Enforcement Strategy for the Nation’s Interior,” 20 April 2006.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

problems of an ever-growing illegal population. Without collaboration among all levels of law enforcement, the nation will be unable to secure its borders, support homeland security objectives in local communities, and gain popular support for beneficial legal activities that are a normal companion of economic globalization.

### **C. BACKGROUND**

The question for the nation is whether a centralized approach of tasking the Immigration and Customs Enforcement (ICE) with the sole responsibility for immigration enforcement is truly in the best interest of our country and homeland security. In contrast, would a more decentralized approach involving state and local law enforcement / correctional agencies be more effective and efficient?

A centralized enforcement strategy limits the country's ability to gather and share intelligence as there are fewer participants in the overall enforcement of immigration law. Also, the centralized approach limits the number of correctional facilities that are participating in the enforcement of immigration law; therefore, it leads one to surmise that we are releasing illegally-present foreign nationals who have been arrested back into our communities to once again prey on our citizens.

When applying a decentralized approach it is necessary for the federal government, especially DHS, to take a lead role with a comprehensive illegal immigration enforcement strategy and assist state and local agencies with setting up the proper Memorandum of Agreements (MOAs), training, and organizational deployment so that all entities involved are working as one unified task force. ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) can provide state and local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities.<sup>7</sup> ICE

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<sup>7</sup> U.S. Immigration and Customs Enforcement, Fact Sheet, Programs: ICE Agreements of Cooperation in Communities to Enhance Safety and Security, August 2007.



developed the ACCESS program based on the experience gained in responding to widespread interest from state and local law enforcement agencies in the Delegation of Immigration Authority–287(g) program.<sup>8</sup>

Although the federal government has the primary role in developing and overseeing the national policy for immigration, the overall effects and ramifications of such a policy are far reaching throughout the nation and even globally. Thus, the issue of illegal immigration enforcement involves many stakeholders who are intertwined at the local, state, federal, and even international level.

In particular, the law enforcement perspective of agency administrators and personnel as it relates to state and local enforcement of immigration law varies from jurisdiction to jurisdiction. Some law enforcement administrators and personnel believe the enforcement of immigration law is solely a federal responsibility. Some chiefs do not believe that local law enforcement agencies should spend much of their limited resources to take on what has essentially been a federal responsibility for illegal immigration enforcement in their communities, and many are concerned that tougher immigration enforcement on the local level will threaten the advances they have made in community policing over the last 20 years.<sup>9</sup> Others do not want to get involved due to personal beliefs that illegal immigration is really not a crime, or they succumb to political pressure not to enforce these types of violations. Some chiefs and sheriffs point to facts and figures indicating that illegal immigrants commit a sizeable portion of their local crimes, and these police executives think they have no choice but to work as closely as they can with federal authorities to arrest, prosecute,

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<sup>8</sup> U.S. Immigration and Customs Enforcement, Fact Sheet, Programs: ICE Agreements of Cooperation in Communities to Enhance Safety and Security, August 2007.

<sup>9</sup> Police Executive Research Forum, “Critical Issues in Policing Series: Police Chiefs and Sheriff’s Speak out on Local Immigration Enforcement,” April 2008.

incarcerate, and eventually deport these offenders. For these chiefs and sheriffs, immigration enforcement is primarily a matter of local crime control and public safety.<sup>10</sup>

Many believe that the application of law should remain unbiased, unprejudiced and influence free, thus providing consistent enforcement throughout the nation. Favoritism is strongly opposed in law enforcement; therefore, the suggestion that law enforcement should avoid enforcement of a particular law due to other influences or favoritism to a class of individuals (employers of illegally-present foreign nationals, industries that profit by the presence of the illegal foreign nationals, foreign nations, or the illegal foreign nationals themselves) is contrary to the sworn duties of law enforcement and correctional officers to serve the public consistently without bias or prejudice. Every law enforcement and correctional officer in the country takes an oath to serve the community in an unbiased and consistent manner; however, law shopping on which laws to enforce and which laws to ignore contradicts an officer's oath and is ethically wrong.<sup>11</sup>

Public trust and confidence are eroded in the criminal justice system when our laws are not consistently enforced and are bartered to employers who, in the interest of their own businesses, hire the illegally-present foreign nationals and insist that the government look the other way.

Certainly a balance must be struck between unambiguous enforcement and discretion, but there is no formula or guide. Certainly, granting a "no enforcement" rule to a complete class of people, illegally-present foreign nationals, is not the answer and the beginning of a slippery slope. If the law enforcement community accepts this type of selective enforcement or non-enforcement for this selected group of people, then what group will be next?

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<sup>10</sup> U.S. Immigration and Customs Enforcement, Fact Sheet, Programs: ICE Agreements of Cooperation in Communities to Enhance Safety and Security, August 2007.

<sup>11</sup> Sheriff Don Hunter, "Chilling Effect and the Enforcement of Immigration Law," August 2007.

The performance of law enforcement duties, critical not only to public safety but also to homeland security, must be consistent. Our efforts across all states must be uniform, jurisdiction to jurisdiction. Consistent application of law through professional enforcement efforts results in a clear and bright line expectation of certainty in the public we serve and the criminal element we intend to deter.<sup>12</sup>

Some state and local governments have made the argument that this federal law violation is a federal responsibility and thus state and local law enforcement officers should not enforce immigration law. Obviously, if such preclusion existed for a state and local law enforcement officer to enforce immigration law, then state and local officers should avoid enforcement. However, there appears to be no such restriction on the application of state sovereignty identified at this time. To the contrary, an opinion issued by the Department of Justice, Office of Legal Counsel (OLC) and announced by then-Attorney General John Ashcroft in 2002 clearly acknowledges the inherent authority of state and local law enforcement officers to enforce civil and criminal immigration law violations.<sup>13</sup>

Some local governments have created what are called sanctuary cities, meaning that they have adopted a “don’t ask-don’t tell” policy where they don’t require their employees, including law enforcement officers, to report to federal officials aliens who may be illegally present in the country.<sup>14</sup> Some localities have even prohibited local law enforcement agencies from identifying or investigating the immigration status of subjects that they come in contact with. For example, Takoma Park, Maryland, has had a sanctuary ordinance since 1985. In 2007, when the ordinance came up for renewal, Chief Ronald Ricucci asked the city council to make one modification that would allow police, when encountering a

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<sup>12</sup> Sheriff Don Hunter, “Chilling Effect and the Enforcement of Immigration Law,” August 2007.

<sup>13</sup> Lisa M. Seghetti, Stephen R. Vira, and Karma Ester, “Enforcing Immigration Law: The Role of State and Local Law Enforcement,” CRS Report for Congress, updated August 14, 2006.

<sup>14</sup> Ibid.

person wanted on an immigration warrant in the National Crime Information Center (NCIC), to call ICE to obtain more information about the warrant. Under Chief Ricucci's proposal, if ICE advised the local police that the subject had been previously deported for committing a violent felony crime, the local police could detain the person. However, the city council unanimously refused to make the recommended change.<sup>15</sup>

This type of protection and selective enforcement sends the message to illegally-present foreign nationals that it is acceptable to violate the law; and if you do, there will be no consequences. Additionally, it sends the wrong message to state and local law enforcement / corrections authorities, because it encourages the protection of a selected group of people (illegally-present foreign nationals). This message is contrary to the oath that law enforcement and correction's professionals take—to serve the public without bias or prejudice and influence free. A secondary effect of this political stance could be the influx of many more unidentifiable illegal foreign nationals to cities identified as sanctuary locations. On June 22, 2008, Anthony "Tony" Bologna and his sons Michael, 20, and Matthew, 16, were shot and killed by Edwin Ramos, an illegal foreign national, after what appeared to be a traffic altercation in San Francisco. Published reports said city officials tried to protect Ramos from being deported back to El Salvador because of San Francisco's sanctuary policy. Ramos, a suspected member of Mara Salvatrucha (MS-13) street gang, had been arrested earlier in his life; however, law enforcement authorities were not allowed to check his immigration status or refer him to ICE due to the sanctuary ordinance of San Francisco. Many have expressed concern about the possibility of police or residents being injured or killed by an illegally-present foreign national as a result of law enforcement or corrections not being allowed to investigate the

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<sup>15</sup> Police Executive Research Forum, "Critical Issues in Policing Series: Police Chiefs and Sheriff's Speak out on Local Immigration Enforcement," April 2008.

immigration status of a subject. This inability to investigate a suspect's immigration status could eventually lead to him/her being allowed to stay in the country illegally and to prey on community residents.

Several foreign governments have expressed their concern over strict enforcement of illegal immigration. Some believe that the concern is based on the financial backlash that would be caused within these countries as a result of the illegally-present foreign nationals no longer sending money back to their family members who still reside within their country of origin. Foreign governments such as Mexico, Brazil, Haiti, Nicaragua, El Salvador, and Guatemala, to name a few, would be impacted by an increase of immigration enforcement within the United States. A large percentage of these countries' economy is supported by the considerable amount of money that is sent back to them by the illegally-present foreign nationals working within the United States. The financial support that families still residing in foreign nations are counting on would not be available; therefore, it may increase financial responsibility of foreign governments to provide social services to their citizens should their family members be deported or removed from the United States.

The overall acceptance and support of community members as it pertains to state and local enforcement of immigration law varies. There are many who would like to make this issue strictly an emotional topic with their arguments against the enforcement of illegally-present foreign nationals. Some say that the enforcement of immigration law would have a negative effect on the relationship between the migrant communities and law enforcement. A new study released at the University of North Carolina advised that one of the unexpected and problematic outcomes of the law is reluctance among immigrants to contact police if they are victims or witnesses of crimes because of the risk of being jailed or deported themselves.<sup>16</sup> Although this may or may not be true, it would lead one to believe that murders, robbers, drug traffickers and gang members are also

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<sup>16</sup> Deborah Weissman, Reef C. Ivey II, Rebecca Headen, and Katherine Parker, "The Policies and Politics of Local Immigration Enforcement Law," February 18, 2009.

reluctant to contact the police, thus should law enforcement no longer enforce these crimes for fear that they will not call the police? Some say that the enforcement of the current law would separate families inasmuch as illegal foreign nationals may have children who now qualify as U.S. citizens born within the U.S. A recent report advised that more than fifteen percent of U.S. families include at least one parent who is a non-citizen and one child a citizen.<sup>17</sup> Although this may be true, does that mean the nation should not enforce the law consistently and if you are a non-citizen then we should turn a blind eye to the violation of law? If that is the case then what we are saying is if you are a parent, we will not enforce federal, state or local law due to the fact that we may arrest you and you may have to go to jail or prison, which in turn would separate you from your family. Also, there is sentiment from some that the majority of illegal foreign nationals present in the U.S. are simply here to make a better living for themselves and are not involved in criminal activity and do not pose a threat to the U.S. The Justice Strategies report advised that day laborers and drivers of color make poor law enforcement targets.<sup>18</sup> However, many law enforcement administrators, community leaders and public citizens would argue that the removal of murders, rapists, burglars, robbers, drug dealers, gang members, organized crime members and possible terrorist suspects are hardly poor law enforcement targets.

Some believe that the enforcement of immigration law by state and local law enforcement will have a “chilling effect” on the relationship between law enforcement and migrant communities. The “chilling effect” of immigration enforcement towards law enforcement has been offered as an excuse for favoring the wholesale application of discretion when immigration enforcement is discussed. In effect, the notion that if we enforce immigration law then the illegally-present foreign nationals will refuse to report victimization to law

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<sup>17</sup> Aarti Shahani and Judith Greene, A Justice Strategies Report, “Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement,” February 2009.

<sup>18</sup> Ibid.

enforcement for fear of deportation/removal is one that is inferred, but difficult to prove. It is argued that the illegally-present foreign national will not trust law enforcement under this circumstance. However, some argue that trust is not inspired under the philosophy of preferential treatment or non-enforcement for immigration law.<sup>19</sup> The idea of encouraging selective enforcement through “non-enforcement” is misleading to the public we serve. On the contrary, trust is built on a foundation of predictability; predictable enforcement of all law should and will inspire trust.<sup>20</sup>

It is difficult to prove that a crime will not be reported if we enforce immigration law, just as it is difficult to demonstrate that we have prevented a crime due to our law enforcement presence or proactive approach. Certainly, consistent and predictable enforcement of all laws creates a deterrence for those who violate the law, but that doesn’t mean that we are going to quit enforcement of those laws. Is it responsible and judicious to not enforce immigration law based on theoretical assumptions?

Hence, the foremost question: Is there truly a “rule of law” in the United States, providing for unbiased enforcement of immigration law by federal, state and local law enforcement regardless of political popularity, sentiment, or influence? Additionally, what strategy can we implement as a nation to confront this homeland security threat?

The United States federal government, in its attempt to secure our borders and combat the entry of illegal foreign nationals and possible terrorists into this country, has employed approximately 17,600 Border Patrol agents and approximately 6,000 specials agents within Immigration and Customs Enforcement. This is approximately one Homeland Security agent for every 500 illegal entrants. On the southern border, as a first line of defense against illegal immigration, the ratio is far higher and as a result the federal government is

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<sup>19</sup> Sheriff Don Hunter, “Chilling Effect and the Enforcement of Immigration Law,” August 2007.

<sup>20</sup> Ibid.

incapable of preventing or at the very least controlling the entry of illegal foreign nationals. This uncontrolled illegal immigration presents an enormous homeland security challenge inasmuch as the Department of Homeland Security and the Federal Bureau of Investigation cannot identify and interview the terrorist suspects entering the country if they cannot identify and know *who* is entering the country.

For example, on October 9, 2002, the Collier County Sheriff's Office assisted the Florida Department of Law Enforcement, under the direction of the 287(g) authority, in arresting 18 illegal foreign nationals who attempted to use false information to purchase driver licenses fraudulently.

On August 30, 2002, a Driver's License Examiner employed by the Collier County Tax Collectors Office reported to the Collier County Sheriff's Office that a subject by the name of Armahan Helvaci was attempting to get in touch with him to see if he would be willing to provide driver's licenses to illegal immigrants.

On September 5, 2002, the Driver's License Examiner working as a Confidential Informant, C.I., placed a call to Helvaci and Helvaci asked him if he would be willing to provide Driver's Licenses to illegal aliens. The CI agreed to do this and wanted to know for how many he was looking. Helvaci stated approximately twenty. The C.I. told Helvaci that he would get back with him about when and where this would occur.

On September 10, 2002, a call was placed to Helvaci from the C. I. Helvaci advised that he had three people ready to go and that he could guarantee fifteen to twenty a month. Helvaci went on to say that he had several Turks lined up along with some South Americans. Helvaci went on to say that they needed to have licenses so that they could open bank accounts, cash checks and register their cars.

On September 26, 2002, Helvaci arrived at the East Naples Driver's License Office with subject Ahmet Celik. Celik told the C.I. that he was interested in purchasing a Florida Commercial Driver's License for his brother Ali Celik.



Ahmet went on to say that his brother Ali, was in the country on a six-month tourist visa, and that it was going to run out soon, so he needed to get a license.

On October 9, 2002, Helvaci, Ahmet Celik and eighteen other subjects arrived at a predetermined location. Each of the subjects were escorted into a room by an undercover officer. Once in the room the subjects photos were taken by a second undercover officer. The subjects then sat at a table with the C.I. and provided him with a name, date of birth, and address to be put on the license. Each subject then paid U.S. currency to the C.I. Upon completion of the process the subjects were taken into custody by the Collier County Sheriff's Office and F.D. L.E. The following is a list of subjects who attempted to purchase Florida driver's licenses through fraudulent means and what class of license they requested.

- Ali Celik—Commercial License with Has-Mat endorsement
- Canan Celik—Operators License
- Huseyin Gungor—Operators License
- Abdullah Ozcelik—Operators License
- Esteban Aguayo—Operators License
- Diosado Robles-Benito—Commercial License
- Juan Aguayo—Commercial License
- Jesus Aguirre—Commercial License
- Ercan Aydin—Operators License
- Freddie Chun—Operators License
- Alicia DeLeon—Operators License
- Walfred Gomez—Operators License
- Selvan Hernandez—Operators License
- Carlos Lora—Operators License
- Angel Maldonado—Operators License
- Daniel Ortiz—Commercial License
- Seref Ozbau—Operators License
- Perfecto Sanchez—Commercial License

After being arrested, Helvaci advised that he met Abdullah Ozcelik on a cruise ship. He said that Ozcelik was a staff member on the cruise ship and that a few months later Ozcelik called him and asked him to pick him up in Miami, because he had left the cruise ship and had no where to go. He advised that he needed to get Ozcelik a driver's license so he could work.

This undercover operation brought to the forefront several homeland security concerns surrounding the issue of illegal immigration. The case displayed the desire of 18 illegally-present foreign nationals, whose identity was unknown, to fraudulently obtain drivers licenses and in some cases, commercial driver's licenses. This fraudulent possession would have been a gateway for further deception and possible criminal and/or terrorist activity. Additionally, it displayed the inability of the federal government to adequately secure our borders which in turn displayed the importance of interior enforcement. In one case it was as simple as getting off of a cruise ship and making a phone call to a so called acquaintance. As stated earlier it is difficult to identify possible terrorist suspects inside the country if we have no way of verifying and validating who has entered the country and why they have entered the country. However, the use of the 287(g) authority by the Collier County Sheriff's Office and F.D.L.E proved to be instrumental and invaluable in assisting the federal government with the enforcement of immigration law.

#### **D. RESEARCH DESIGN**

The specific question addressed in this thesis is how can the INA Title VIII, 287(g) program, which allows state and local law enforcement authorities to enforce immigration law, be implemented throughout the nation to assist with filling the mission gaps associated with illegal immigration enforcement effectively?

This analysis will seek to contribute to the national discussion on immigration and homeland security by demonstrating and documenting a few instances in which the authorities granted under the Title VIII, 287(g) program have been utilized throughout the country to fill the gaps associated with illegal immigration enforcement.

The methodology utilized in this thesis project involved a two step approach. The first step was to conduct structured interviews with subject matter experts and practitioners in the area of the Title VIII, 287(g) program. The purpose of the interviews was to gain practical insight into a historical perspective of the program, nexus associated with homeland security, current challenges, program applicability to illegal immigration enforcement and the future of the program.

The second step involved a case study of the implementation and use of the Title VIII, 287(g) program by the Collier County Sheriff's Office, the Alabama Department of Public Safety, and the Mecklenburg County Sheriff's Office to fill the mission gap associated with the enforcement of immigration law.

The research examined the operations, strategies and mechanisms by which the three programs were developed and implemented. The format for the 287(g) case study of each agency was as follows.

- Agency Title VIII, 287(g) program history/timeline (from inception to implementation to current status)
- Justification/reasoning/issues for instituting the 287g program
- Challenges of implementing and maintaining the program
- Who are the stakeholders within the community and how did the agency reach out (market) the program to each of these groups?
- The number of deputies/officers currently involved with the program and the organizational structure of the program. (Organizational/program chart if possible)
- Program strategy, enforcement and/or community out reach (please provide written strategy if it exists, if not what is the philosophical strategy)

- Metrics/data: 287g program activity such as number of detainees placed, illegal foreign nationals removed, how many are re-entries from prior deportations, how many were overstays (expired visas), prior arrest history (average number of misdemeanor and felony arrests), for each illegal foreign national who is detained, if program is being conducted in a corrections facility (what is the percentage of jail inmates who are illegal foreign nationals, country of origin)
- Memorandum of Agreement (MOA) b/t the agency and ICE
- Program outcomes (positive and/or negative impacts to the agency and community)
- Discussion points not addressed with the above questions

The case studies were reviewed to determine commonalities and differences and evaluate each program's uniqueness to the specific needs of their respective communities. Thus, how can the 287(g) program be utilized to fill the mission gap associated with the enforcement of immigration law?

Additionally, structured interviews (phone and electronic) were conducted with subject matter experts and practitioners (Sheriff Jim Pendergraph, former ICE 287(g) program coordinator for state and local agencies, Former Sheriff Don Hunter, Agency administrator at the Collier County Sheriff's Office (cross-designated agency) and Dr. Robert Bach, S.M.E. on (immigration law and its effects on society) in the area of the Title VIII, 287(g) program. The purpose of the interviews was to gain practical insight into the historical perspective of the program, nexus associated with homeland security, current challenges, program applicability to illegal immigration enforcement and the future of the program.

By reviewing the case studies and analyzing the information provided by the subject matter experts during the interviews, this thesis will make appropriate policy recommendations to address the challenges associated with the use of the Title VIII, 287(g) program for immigration enforcement.

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## **II. THE HOMELAND SECURITY AND PUBLIC SAFETY CONCERNS THAT SURROUND ILLEGAL IMMIGRATION**

For years, the United States has had a high tolerance, or what some might consider an ineffective homeland security strategy, for illegal immigration into the country. However, due to the current terrorist threats to the nation, such an attitude is no longer sustainable. The United States has had to reassess the issue of illegal immigration, because the nation's failure to control our porous borders has resulted in some dangerous side effects for homeland security and public safety. A report published by the Center for Immigration Studies advised that terrorists have used just about every means possible to enter the United States, from acquiring legitimate passports and visas for entry to stowing away illegally on an Algerian gas tanker.<sup>21</sup> Therefore, the current estimate of 12–20 million illegal foreign nationals residing within the United States and the nation's inability to verify the true identity of those currently residing in the United States illegally should be alarming and concerning to all.

The issue of illegal immigration brings with it a number of homeland security questions and concerns. Would the presence of 12–20 million illegal/undocumented foreign nationals, whose identities cannot be authenticated, represent a criminal and/or homeland security threat? Would the inability to identify and determine the criminal past or terror association of 12–20 million illegal foreign nationals who had unlawfully entered the United States or lawfully entered and overstayed their visas in the United States represent a criminal and/or homeland security threat? Would the presence of people who had applied for and been granted citizenship or legal permanent resident status through fraud and false declaration create a criminal and/or homeland security threat? If we knew that a significant number of violent or organized criminals and/or terrorists (MS-13, Los Zetas, 18<sup>th</sup> Street Gang, Mexican Mafia, Hezbollah, and al-Qaeda)

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<sup>21</sup> Janice L. Kephart, "Immigration Benefits and Terrorism: Moving beyond the 9/11 Staff Report on Terrorist Travel," Center for Immigration Studies, September 2005.

were present in the unknown illegal foreign national population, would this represent a criminal and/or homeland security threat? These are just a few of the homeland security questions that surround the issue of illegal foreign nationals currently entering and residing in the United States. Hence, the foremost question: Is there truly a “rule of law” in the United States, providing for the unbiased enforcement of immigration law by federal, state and local law enforcement regardless of political popularity, sentiment, or influence. The toleration of illegality in the form of immigration is so extensive that it undermines the legitimacy of the rule of law in the United States. Therefore, the lack of enforcement not only increases the possibilities of terrorists finding ways into the U.S., but challenges the ability of the U.S. government at all levels—federal, state and local—to maintain order and protect itself.

In May of 2006, FBI Director Robert Mueller testified before the House Appropriation Subcommittee that a Hezbollah human smuggling ring organized by the group had been located and arrested at the Mexican border. Director Mueller has confirmed in testimony that there are individuals from countries with known al-Qaeda connections who are changing their Islamic surnames to Hispanic-sounding names and obtaining false Hispanic identities, learning to speak Spanish, and pretending to be Hispanic immigrants.<sup>22</sup> These examples highlight the vulnerability and dangerous interaction between traditional transnational criminal activities and more ominous threats to our national security.

During 2005, Border Patrol apprehended approximately 1.2 million illegal foreign nationals; and of those, approximately 165,000 were from countries other than Mexico.<sup>23</sup> What is extremely alarming is that out of the 165,000, there were 650 from special interest countries which are “designated by the intelligence community as countries that could export individuals that could bring harm to our

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<sup>22</sup> FBI FY 2006 Budget Request, Hearing before the House Committee on Appropriations, 108 Congress, March 8, 2005.

country in the way of terrorism.”<sup>24</sup> Data indicates that there are hundreds of illegal foreign nationals who enter the United States annually who are from countries known to support and sponsor terrorism: Iran, Jordan, Lebanon, Syria, Egypt, Saudi Arabia, Kuwait, Pakistan, Cuba, China, Yemen, and Afghanistan.<sup>25</sup> Since September 11, 2001, the Department of Homeland Security has reported a 41 percent increase in arrests of Special Interest Aliens along the Texas/Mexico border.<sup>26</sup>

Just recently, U.S. intelligence officials reported that seven Iraqis were found in Brownsville, Texas, in June 2006.<sup>27</sup> In August 2006, an Afghani man was found swimming across the Rio Grande River in Hidalgo, Texas, and as recent as October 2006, seven Chinese were apprehended in the Rio Grande Valley area of Texas.<sup>28</sup> U.S. Immigration and Customs Enforcement investigations and intelligence have revealed that illegal foreign nationals were smuggled from the Middle East to staging areas/safe houses in Central and South America prior to being smuggled illegally into the U.S.<sup>29</sup>

Over the past several years, the number of illegal foreign nationals other than Mexicans (“OTMs”) crossing the border and coming into the U.S. has grown at an alarming rate. The large increase in the number of OTMs coming across the border has made it difficult for Border Patrol agents to identify and process each of them; therefore increasing the chances of a terrorist slipping through the system. There have been several items located by law enforcement officials near

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<sup>23</sup> The Majority Staff of the House Committee on Homeland Security, Michael T. McCaul, Chairman, “A Line in the Sand: Confronting the Threat at the Southwest Border,” 2006.

<sup>24</sup> David Aguilar, Chief, Office of Border Patrol, Written Statement before the U.S. Senate Committee on the Judiciary Subcommittee on Immigration, Border Security, and Citizenship, April 28, 2005.

<sup>25</sup> The Majority Staff of the House Committee on Homeland Security, Michael T. McCaul, Chairman, “A Line in the Sand: Confronting the Threat at the Southwest Border,” 2006.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.



the Rio Grande River and inland that indicate the possibility of subjects with terrorist ties entering the U.S.<sup>30</sup> A jacket with patches from countries where al-Qaeda is known to operate was found in Texas near the border by Border Patrol. The patches on the jacket show an Arabic military badge; one depicting an airplane flying over a building and heading towards a tower, and another showing an image of a lion's head with wings and a parachute emanating from the animal. The bottom of the patch read "martyr" meaning "way to eternal life" or "way to immortality."<sup>31</sup> Unfortunately, there is no way of actually knowing how many OTMs make it across the border undetected, which in turn means that we have no way of knowing the tangible threat from inside our own borders.

Recently, the Secretary of State determined that the Bolivarian Republic of Venezuela demonstrated a "near complete lack of cooperation with U.S. Government efforts to fight terrorism."<sup>32</sup> In addition, Venezuela has also developed a close relationship with terrorist sponsors Iran and Cuba.<sup>33</sup> Venezuelan travel and identification documents are becoming extremely easy to obtain by non-Venezuelans and are for sale in either the requestor's identity or any identity provided.<sup>34</sup> It is believed that the Venezuelan government is issuing fraudulent identity documents that could be used to obtain a U.S. visa; therefore, allowing subjects to enter the country under false identification. U.S. military and intelligence officials believe Venezuela is emerging as a potential hub and strong supporter of terrorism in the Western Hemisphere.

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<sup>30</sup> The Majority Staff of the House Committee on Homeland Security, Michael T. McCaul, Chairman, "A Line in the Sand: Confronting the Threat at the Southwest Border," 2006.

<sup>31</sup> Ibid.

<sup>32</sup> Frank Urbancic, State Department Deputy Coordinator for Counterterrorism, Statement before the U.S. House Committee on International Relations, Subcommittee on International Terrorism, July 13, 2006.

<sup>33</sup> The Majority Staff of the House Committee on Homeland Security, Michael T. McCaul, Chairman, "A Line in the Sand: Confronting the Threat at the Southwest Border," 2006.

<sup>34</sup> Ibid.

Another area of concern is the Tri-Border area which is a small region in South America where Brazil, Argentina and Paraguay intersect. The region is one of the most poorly controlled borders in the world which in turn has led to corruption, crime and a terrorist safe-haven. A MSNBC story advised the Iranian-backed Hezbollah militia has taken root in South America, fostering a well-financed force of Islamist radicals boiling with hatred for the United States and ready to die to prove it, according to militia members, U.S. officials, and police agencies across the continent.<sup>35</sup> An investigation by Telemundo and NBC News has uncovered details of an extensive smuggling network run by Hezbollah, a Shiite Muslim group founded in Lebanon in 1982 that the United States has labeled an international terrorist organization. The operation funnels large sums of money to militia leaders in the Middle East and finances training camps, propaganda operations and bomb attacks in South America, according to U.S. and South American officials.<sup>36</sup> In 2001, three individuals detained in Paraguay for false passports were identified by the FBI as having close ties to Hamas and the Lebanese al-Kaffir group.<sup>37</sup> The implications of such a lawless area raise several homeland security concerns for the U.S., because the Hezbollah militiamen have taken Hispanic surnames, speak Spanish and look Hispanic, thus it would be very easy for them to blend into the many alien smuggling networks that facilitate the movement of illegal foreign nationals across the U.S. border.

According to a May 2002, study by the Center for Immigration Studies, of forty-eight Islamic militants involved in terrorist conspiracies in America during the past decade, only one third were here legally on temporary visas as students, tourists, or business travelers—as most of the September 11 hijackers were when

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<sup>35</sup> Roguely, "The Enemy Next Door: Hezbollah in South America," <http://www.roguelystated.com/2007/05/31/the-enemy-next-door-hezbollah-in-south-america/>; Internet (accessed January 26, 2009).

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

they committed their terrorist acts.<sup>38</sup> Another 17 were lawful permanent residents or naturalized American citizens. One fourth were illegal aliens who overstayed their visas, crossed illicitly across the border, arrived as stowaways on ships, or entered the country using false passports.<sup>39</sup> In all, 21 of the 48 Islamist terrorists violated our immigration laws at some point.<sup>40</sup> Steve Camarota noted, “Illegal aliens have taken part in almost every major attack on American soil perpetrated by Islamist terrorists, including the first attack on the World Trade Center, the Millennium plot, the plot to bomb the New York subway, and the attacks of 9/11.”<sup>41</sup>

Clearly, there continues to be an ever-present threat of terrorist infiltration through our porous borders with illegal foreign nationals coming into the United States unchallenged and undetected. In addition to illegal entry, terrorists may exploit lawful means to enter the United States. After the attacks of September 11, 2001, we learned that 5 of the 19 hijackers; who entered the U.S. lawfully, had violated federal immigration laws under the Immigration and Nationality Act (INA). Four of these five terrorists had been stopped by local police for various infractions prior to those attacks.<sup>42</sup> In 1989, Kuwaiti terrorist Eyad Ismoil entered the United States on a student visa to attend college. In 1991, Ismoil dropped out of school, a violation of his immigration status. In 1993, Ismoil drove a van carrying explosives into the World Trade Center killing six people and wounding over 1,000.<sup>43</sup>

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<sup>38</sup> Michelle Malkin, *Invasion: How America Still Welcomes Terrorists, Criminals and Other Foreign Menaces to Our Shores* (Washington, D.C.: Regnery Publishing, Inc., 2002).

<sup>39</sup> Michelle Malkin, *Invasion: How America Still Welcomes Terrorists, Criminals and Other Foreign Menaces to Our Shores* (Washington, D.C.: Regnery Publishing, Inc., 2002).

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Kris W. Kobach, “State and Local Authority to Enforce Immigration Law: A Unified Approach for Stopping Terrorists,” June 2004.

<sup>43</sup> Ibid.

The United States federal government, in its attempt to secure our borders and combat the entry of illegal foreign nationals and possible terrorists into this country, has employed approximately 17,600 Border Patrol agents<sup>44</sup> and approximately 6,000 special agents with Immigration and Customs Enforcement.<sup>45</sup> This is approximately one Homeland Security agent for every 500 illegal entrants. The disproportionate ratio of agent to illegal foreign national makes it difficult if not impossible to provide a strong defense towards the entrance of terrorist and/or criminal perpetrators. Therefore, it is impossible for the Department of Homeland Security and the Federal Bureau of Investigation to know who is entering and exiting the country on a daily basis. This is where state and local law enforcement agencies, with the proper training and authority, can be an integral tool in assisting the federal government in locating, investigating, identifying and apprehending those who have entered the country illegally and those who, although lawfully admitted, are now in violation of the Immigration and Nationality Act and subject to removal. The use of state and local law enforcement agencies as a supplemental federal task force to assist with immigration violations is vital if terrorists are to be located, identified, and apprehended before they act.

The risk to public safety is another significant side effect of illegal immigration. The strain on federal, state and local law enforcement due to criminal activity caused by illegally-present foreign nationals has resulted in valuable resources, staffing and budgetary, being diverted away from efforts that could concentrate solely on homeland security programs. In 2005, the Department of Justice estimated 630,000 criminal aliens were booked into U.S. prisons and jails.<sup>46</sup> In 2005, the U.S. Government Accountability Office (GAO) studied arrest and offense information for over 55,000 criminals incarcerated in

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<sup>44</sup> DHS, Homeland Security and Immigration Enforcement Fact Sheet, October 23, 2008.

<sup>45</sup> Center for Immigration Studies Report, July 12, 2006.

<sup>46</sup> U.S. Immigration and Customs Enforcement, Press Release, "Department of Homeland Security Unveils Comprehensive Immigration Enforcement Strategy for the Nation's Interior," April 20, 2006.

U.S. prisons and jails who entered the country illegally.<sup>47</sup> They had determined these criminal aliens had been arrested a total of nearly 460,000 times over 700,000 criminal offenses. This is an average of eight arrests and 13 offenses per criminal alien.

In many cases, these illegal immigrants are committing violent and sex crimes. Research from Violent Crimes Institute (2006) revealed there are approximately 240,000 illegal immigrant sex offenders in the United States.<sup>48</sup> According to this research, this is a conservative estimate and is based on numbers from Immigration and Customs Enforcement (ICE) reports and public records.

The study analyzed 1,500 ICE cases involving sex crimes and murder and discovered 35 percent were child molestations, 24 percent were rapes, and 41 percent were sexual homicides and serial murders. The victims of these crimes cut across all races, socioeconomic status, and age. For the rape cases, victims ranged from 16–78 years of age. Over 70 percent of the rape victims suffered brutal attacks, including being controlled by a weapon and beaten during the rape. In nearly one quarter (22percent) of all the sex crimes, the criminal aliens targeted physically and mentally disabled victims.

This study revealed each serial rapist averaged five victims, with the number of victims ranging from two to 11 each. Two of the criminal alien serial rapists were HIV positive. The murders and sexual homicides were particularly vicious, with the offender displaying intense anger. Six percent of the victims were not only raped, but also mutilated during the attack. Most often, the victims were ambushed, and ranged in age from 16–81 years of age.

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<sup>47</sup> U.S. Government Accounting Office, "Information on Certain Illegal Aliens Arrested in the United States," *Report GAO-03-646R*, May 9, 2005.

<sup>48</sup> Deborah Schuman-Kauflin, "The Dark Side of Illegal Immigration: Nearly One Million Sex Crimes Committed by Illegal Immigrants in the United States," Violent Crimes Institute, 2006.

Overall, the offenders averaged four victims each and approximately 63 percent had been previously deported on a different criminal offense. On average, they spent three years committing crimes prior to being arrested for the sexual offense. Nearly 80 percent were in the U.S. for over one year before being arrested for a sex crime and were already well known to the criminal justice system.

Transnational gangs pose another serious threat to our country's safety. A recent study found transnational immigrant gangs are in about every state in the U.S., including suburban and rural areas.<sup>49</sup> These gangs are made up mostly, if not entirely, of immigrant youth and children of legal and illegal immigrants. The study reports ICE has arrested more than 8,000 gang members from more than 700 different gangs since 2005. The majority (80 percent) have committed serious crimes with close to half (40 percent) having violent criminal histories. These gang members are from more than 50 different nationalities, with the majority from Mexico and El Salvador. Both countries have high rates of legal and illegal immigration to the United States, and some gangs, such as MS-13 and Los Zetas, are believed to be mostly illegal aliens.

In addition to the threat from the violent nature of these sexual predators and gang members, there is an enormous monetary cost to incarcerate criminal aliens in our jails and prisons. A study by the GAO estimated the cost of incarcerating criminal aliens to be \$5.8 billion from 2001 through 2004.<sup>50</sup> However, this estimate is based on just a portion of the criminal aliens booked annually into our prisons and jails. The actual cost is in fact much higher.

The victimization and monetary costs of illegally-present criminal aliens in our society is alarming. Hundreds of thousands of illegally-present foreign nationals are committing crimes in this country. Yet, the Department of Homeland

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<sup>49</sup> Jessica M. Vaughan and Jon D. Feere, "Taking Back the Streets, ICE and Local Law Enforcement Target Immigrant Gangs," Center for Immigration Studies, October 2008.

<sup>50</sup> U.S. Government Accountability Office, "Information on Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails," *Report GAO-05-337R*, April 7, 2005.

Security, the federal agency tasked with handling this issue, has a limited number of investigators and enforcement/removal agents to deal with this population. Our nation consists of nearly 7,000 miles of land border and 95,000 miles of coastal border to protect and monitor, yet there are only approximately 17,600 border patrol agents to do this job.<sup>51</sup> As one can see the staffing levels of the federal government to enforce immigration law and protect our borders is insufficient for the tremendous demands that are placed on it. Thus, state and local governments need to work together with the federal government to implement a comprehensive plan that could complement each other and help compensate for federal resource and staff limitations.

However, there is a long standing debate on whether or not the enforcement of immigration law by state and local law enforcement / corrections agencies would help to strengthen our homeland security efforts and if strict enforcement would really reduce the number of illegal foreign nationals who reside within the United States. Some have argued that because illegal foreign nationals are so firmly embedded in the American society, enforcement, especially at the state and local level, would not significantly reduce their numbers.<sup>52</sup> Some even believe the American dream is so strong and gravitational that strict enforcement at the state and local level cannot and will not deter illegal migration from occurring, thus there is no reason to pursue this endeavor as it will only hurt community relations. Recent research by the Center for Immigration Studies analyzed the Current Population Survey collected monthly by the Census Bureau. The findings show clear evidence that the illegally-present foreign national population has declined significantly.<sup>53</sup> The evidence indicates that, since hitting a peak in the summer of 2007, the illegal

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<sup>51</sup> Department of Homeland Security, Homeland Security Border Security and Immigration Enforcement Fact Sheet, October 23, 2008.

<sup>52</sup> Steven A. Camarota and Karen Jensenius, Backgrounder, "Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population," Center for Immigration Studies, July 2008.

<sup>53</sup> Ibid.

population may have declined by 11 percent through May of 2008, and it seems that increased enforcement at the federal, state, and local levels are at least partly responsible for this decline.<sup>54</sup>

However, some argue there is a cost to this enforcement. Many community members, activists, and even law enforcement/correctional agencies believe that increased enforcement of immigration law by state and local law enforcement/corrections agencies will strain the relationship between the agencies and the communities, especially immigrant communities. Some believe this type of enforcement at the state and local level will cause a psychological effect referred to as the “chilling effect.”

The “chilling effect” is the theoretical relationship that may result between law enforcement and the immigrant community if illegal immigration is enforced by state and local law enforcement/corrections agencies. This concept is based on the belief that fear of arrest and deportation will cause the members of immigrant communities to fear law enforcement, thus they will no longer report crimes against themselves or trust law enforcement in general. The origins of the “chilling effect” theory are unclear, and hard evidence of the phenomenon is non-existent in crime statistics, social science research, or real-life law enforcement experience.<sup>55</sup> Rather, immigrants reporting crime are one of the main ways ICE launches investigations against criminal illegal foreign nationals, especially in gang cases.<sup>56</sup> One veteran immigration agent advised, “During my 27 years of experience, 99 percent of our information and leads came from the illegally present foreign national community, either because they had been a victim of a crime or had been denied work.”<sup>57</sup> Although some may allege that the victims of crimes refuse to come forward as a result of strict enforcement and fear of being

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<sup>54</sup> Ibid.

<sup>55</sup> Jessica M. Vaughan and Jan D. Feere, “Taking Back the Streets, ICE and Local Law Enforcement Target Immigrant Gangs,” Center for Immigration Studies, October 2008.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.



deported, there is no evidence or proof of federal, state, or local law enforcement targeting these victims for removal once they come forward. In fact, contrary to what some advocates would like you to believe, there are actually temporary visas or special protections available to victims, witnesses, and even informants under immigration law. Thus, it is imperative for local agencies to work with ICE and educate their officers and the immigrant community on what legal provisions exist and how these provisions can be executed if necessary.

If an agency does not participate or communicate with ICE, it could jeopardize the successful prosecution of a case in the event the agency's victim, witness, or informant comes into contact with ICE and is removed from the country. Therefore, it makes sense to work hand in hand with the immigrant community and ICE, so proper provisions can be implemented for the safety and well being of crime victims.

Although many would like to claim a great divide would be created as a result of the enforcement of immigration law by state and local law enforcement/corrections agencies, there is no real statistical proof through crime reporting that would support the accusations of the "chilling effect" theory. It is also important to remember that a large percentage of the illegally-present foreign national population is originated from third world countries that have a history of law enforcement corruption, which in turn causes them to mistrust law enforcement. While speaking to a group of participants during an immigration summit, David Alejandro of the ICE Office of Detention and Removal reminded everyone that some immigrants fear police for reasons other than deportation.<sup>58</sup> "There are a lot of cultural differences that we misinterpret," Mr. Alejandro said "A lot of the foreign-born population are not really afraid of being deported, but in their culture, law enforcement officers are corrupt."<sup>59</sup> Therefore, a wholesale

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<sup>58</sup> Police Executive Research Forum, "Critical Issues in Policing Series: Police Chiefs and Sheriff's Speak Out on Local Immigration Enforcement," April 2008.

<sup>59</sup> Ibid.

statement accusing the enforcement of immigration law as the catalyst for non-reporting is based on bias and emotion rather than empirical evidence.

One needs to remember that non-reporting of crime has always been an issue and concern across the country. According to the Bureau of Justice Statistics surveys on crime victimization and reporting, only about 50 percent of all crimes are ever reported to police.<sup>60</sup> Furthermore, Hispanics are actually slightly more likely than non-Hispanics to report crimes. For example, in 2005, the most recent year available, Hispanics reported 51 percent of all violent crimes to police, while non-Hispanics reported 47 percent.<sup>61</sup> A widely-cited study by researchers Robert C. Davis and Edna Erez tested several factors that would cause immigrants not to report crime, and found that the type of crime (domestic violence vs. other crimes) was the only significant predictor (as opposed to educational level, nationality, immigration status, or ethnicity) to reporting crime.<sup>62</sup> In a later study, Davis and Erez found that “the most frequently mentioned hardship faced by immigrants in reporting to the police was language (47 percent). Cultural differences were also frequently cited (22 percent), as was lack of knowledge of how the U.S. criminal justice system works (15 percent). Less commonly cited reasons included fear of authorities and/or deportation (10 percent), fear of retaliation (3 percent), and the belief that the criminal justice system is not responsive to the needs of immigrants (3 percent).”<sup>63</sup>

Some would like to use the argument of the psychological effects or the “chilling effect” theory to stop state and local law enforcement/corrections agencies from enforcing immigration law. However, the statistical data proving this theory is limited and narrowly focused at best. Research has shown that the relationship between law enforcement and communities of people from emerging

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<sup>60</sup> Jessica M. Vaughan and Jan D. Feere, “Taking Back the Streets, ICE and Local Law Enforcement Target Immigrant Gangs,” Center for Immigration Studies, October 2008.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Robert C. Davis and Edna Erez, “Immigration Population as Victims: Toward a Multicultural Criminal Justice System,” National Institute of Justice: Research Brief, May 1998.

and developing countries is continuously a work in progress due to their experience involving police corruption in their country of origin. This reaction is especially prevalent in communities with first generation populations from third world countries where police corruption is a common practice. Unfortunately, we cannot undo their cultural expectations of law enforcement; however, we can work on building trust through consistent and fair enforcement of all laws.

Using the psychological effects of immigration enforcement as an excuse for non-enforcement is unfortunate and truly misleading. The attempt to prevent state and local law enforcement from enforcing immigration law, which in turn would create a protected class of citizens (illegal immigrants), is counter productive for law enforcement at all levels. Trust is built on consistent and unequivocal enforcement of all laws; therefore, any alleged psychological anxiety could be alleviated or at least limited through consistent and predictable enforcement of immigration law by all law enforcement/corrections agencies throughout the nation.

Some have suggested that the enforcement of immigration law is unfair and biased. Others have stated that the enforcement of immigration law would have a chilling effect on relations between the illegally-present foreign national population and local law enforcement. In essence, the argument is that the illegally present foreign national will not report crime to the police if immigration laws are strictly enforced and there exists a potential that the illegally-present foreign national would be detained or deported.

Some law enforcement administrators have stated that if the 800,000 law enforcement officers of the U.S. went out and arrested one or two illegally-present foreign nationals at once, ICE would not have the ability or capacity to deal with them. This same analogy could be used for the current active warrants that most jurisdictions are faced with. Most local jurisdictions have thousands, if not tens of thousands, of active warrants outstanding and if everyone got

arrested at once the local system would be backlogged. However, this doesn't mean that law enforcement officers should refrain from looking for those in the community who have active warrants.

Many argue that enforcement of immigration law is purely and exclusively a federal responsibility. However, the cross-certification, under the INA Title VIII, 287(g) authority, between Immigration and Customs Enforcement (ICE) and state and local patrol officers, detectives, investigators, and correctional officers working in conjunction with ICE, allows these local and state officers necessary resources and latitude to pursue investigations relating to terrorism, violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering.

State and local law enforcement officers make more contact with the general public on a daily basis than do federal officers; therefore, it only comes to reason that they have a high probability of coming into contact with illegal aliens associated with criminal or terrorist organizations.

Philosophically, all who enforce the laws have adopted by oath the proposition that we will honor the "rule of law" by enforcing the law consistently without prejudice and in defiance and denial of external influences. This dispassionate enforcement of law is taught at every American law enforcement academy. The enforcement of law continues to be a very complex and ever evolving area; however, cross-certifying our state and local law enforcement agencies to consistently enforce immigration law when dealing with criminal aliens should be a top priority for our nation.

Therefore, cross-certifying state and local law enforcement under the INA Title VIII, 287(g) to assist with the investigation and enforcement of immigration law would benefit American society by: increasing the number of visible law enforcement officers trained to assist with immigration law, increasing the nations ability to gather and share intelligence, increasing the nations ability to identify and remove criminal aliens who have been arrested and detained in U.S. jails

and prisons, reducing jail and prison costs associated with holding criminal aliens, increasing public safety and reducing victimization by removing recidivist criminals from communities, identifying and removing criminal aliens who are street gang members and reducing terrorism risks. The federal government is inadequately staffed to deal with the current concerns and possible threats associated with illegally-present foreign nationals, thus the utilization of state and local law enforcement as a force multiplier will assist in strengthening our nation's overall security as it relates to crime and/or homeland security threats.

### **III. REVIEW OF OPINIONS REGARDING ILLEGAL IMMIGRATION ENFORCEMENT**

Illegal immigration is a problem and concern that faces the entire nation at all levels of society. This issue is very serious, and at times controversial, and in one way or another affects every American throughout the United States. Across the country, in communities large and small, residents and policy makers are grappling with the issues raised by a population of immigrants who have entered the United States illegally.<sup>64</sup>

Many would agree that a comprehensive reform for illegal immigration is needed in order to preserve the safety of the nation. Chief Kim Dine, Frederick Police Department, MD, has advised, "We need a rational, logical, thoughtful policy, some kind of bright line by which police departments can operate. I think there's general agreement in law enforcement that once someone is arrested for an offense, it makes sense to check their immigration status, just as we would check to see if there was an outstanding warrant from some other state."<sup>65</sup> Chief Dine goes on to say, "What is missing is a sensible national policy with a standardized approach regarding immigration, including defined sanctions for illegal immigrants who commit various crimes. Without such a policy, we spin our wheels and end up in the middle of a political debate that seems to generate hate and fear. This is not productive, because most local departments continue to believe that building trust and communication with all of our communities, especially our minority communities, is a key component of effective and enlightened policing."<sup>66</sup> James Carafano, PhD believes any effective solution for reducing illegal border crossings and the unlawful population in the United States must address all three aspects of the problem: internal enforcement of

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<sup>64</sup> Police Executive Research Forum, "Critical Issues in Policing Series: Police Chiefs and Sheriff's Speak out on Local Immigration Enforcement," April 2008.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

immigration laws, international cooperation, and border security.<sup>67</sup> However, literature has shown that the country has mixed feelings on whether or not the federal government is best suited to handle this issue alone due to a minimum estimate of 12 million illegally-present foreign nationals residing in the United States and only 6,000 Special Agents with the Immigration and Customs Enforcement to follow up with the investigations and enforcement of these violators. The Police Executive Research Forum (PERF) advises that some chiefs at the Immigration Summit expressed a strong belief that illegal immigrants are a significant factor in their local crime, while others said they believe that illegal immigrants are less likely to commit crime because most are here to work and they try to avoid being noticed by the police for any reason.<sup>68</sup> Some chiefs and sheriffs believe they have a responsibility to the people they serve to remove any and all types of threats from their community including those who have entered the country illegally. Others believe that the enforcement of immigration law is strictly a federal issue, and state and local law enforcement should not partake in the enforcement of immigration law due to the concern that immigration enforcement might jeopardize their relationship with their local community.<sup>69</sup> PERF has advised that many participants at the Immigration Summit predicted that increased enforcement of immigration law will have a significant chilling effect on crime reporting in immigrant communities.<sup>70</sup> Conversely, Sheriff Don Hunter of Collier County, Florida, has said that statistics justify a concern about illegal immigrants' involvement in crime in his jurisdiction. Sheriff Hunter goes on to say, "To get at the actual specifics of our local crime pattern regarding illegal immigration, we looked at our local jail population. We simply asked the people in jail, at five 'snapshots' in time, and we discovered that

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<sup>67</sup> James Carafano, PhD, "Section 287(g) It's the Right Answer for State and Local Immigration Enforcement," Heritage Foundation, Executive Memo #994, March 2, 2006.

<sup>68</sup> Police Executive Research Forum, "Critical Issues in Policing Series: Police Chiefs and Sheriff's Speak out on Local Immigration Enforcement," April 2008.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

on average 24 percent of our jail population was willing to report that they were illegally-present foreign nationals. I think I can translate the percentage of people in our jail to street crime. [Considering that 24 percent of the jail inmates admit being illegal immigrants,] I suspect that 24 to 30 percent of our crime problem would likely be associated with the presence of illegally present foreign nationals.”<sup>71</sup> However, Chief George Gascon of Mesa, AZ, took issue with those who contend that illegal immigrants are responsible for a large proportion of crime. Chief Gascon advised, “I have heard how unauthorized immigrants are responsible for as much as 90 percent of the serious crime in Mesa. The problem with this assertion is that it is not supported by the facts.” Specifically, Gascon wrote, Hispanics—whether legally in this country or not—accounted for 31.6 percent of all arrests in Mesa, and accounted for approximately 30 percent of the city’s population.<sup>72</sup>

Current research and literature would bring one to the conclusion that federal agencies lack the ability and capacity to properly enforce all immigration violations as they relate to serious crime and terrorist threats, let alone any and all immigration violations.

James Carafano, PhD advises that it makes sense to capitalize on state and local law enforcement agencies, which are comprised of approximately 700,000 officers, to assist with investigating, apprehending, transporting, and deporting of illegal foreign nationals. Carafano believes that state and local governments need to provide more support for the enforcement of immigration law, especially illegal foreign nationals who commit crimes and prey upon the citizens of their own communities; but it must be balanced with equally compelling priorities.<sup>73</sup>

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<sup>71</sup> Police Executive Research Forum, “Critical Issues in Policing Series: Police Chiefs and Sheriff’s Speak out on Local Immigration Enforcement,” April 2008.

<sup>72</sup> Ibid.

<sup>73</sup> James Carafano, PhD, “Section 287(g) It’s the Right Answer for State and Local Immigration Enforcement,” Heritage Foundation, Executive Memo #994, March 2, 2006.



The Heritage Foundation produced an Executive memo which recommended that state and local participation should respect federalism, safeguard the liberties and rights of U.S. persons, not impose huge unfunded mandates on state and local governments, contribute to reducing the unlawfully-present population in the United States and deter illegal reentry, help to combat transnational threats of violent and organized criminal offenders, and strengthen community policing, thus facilitating greater cooperation between law enforcement and communities.<sup>74</sup>

There is a program that currently exists that allows state and local law enforcement officers to participate in the enforcement of immigration law. The program is called Title 8, Section 287(g) or Section 287(g). In 1996, Congress passed such a delegation in the form of the Illegal Immigration Reform and Immigrant Responsibility Act which included INA Section 287(g). This act was added into the already existing Title 8 such that 287(g) is also referred to as 8U.S.C. §1357(g). INA 287(g) allows the Secretary of the U.S. Department of Homeland Security to enter into agreements (Memorandum of Agreement) with state and local law enforcement agencies permitting designated officers of those agencies to perform immigration law enforcement functions.<sup>75</sup> Section 287(g) encompasses the spectrum of basic enforcement powers which includes not only the power to arrest and transfer, but also the power to investigate immigration violations, the power to collect evidence and assemble an immigration case for prosecution or removal, the power to take custody of aliens on behalf of the federal government, and other general powers involved with the routine enforcement of immigration laws.<sup>76</sup>

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<sup>74</sup> James Carafano, PhD, "Section 287(g) It's the Right Answer for State and Local Immigration Enforcement," Heritage Foundation, Executive Memo #994, March 2, 2006.

<sup>75</sup> U.S. Immigration and Customs Enforcement, Fact Sheet, "Section 287(g) Immigration and Nationality Act, August 16, 2006.

<sup>76</sup> Kris W. Kobach, Testimony on the 287(g) Program, "Ensuring the Integrity of America's Border Security System through Federal-State Partnerships," before the House Subcommittee on Management, Integration and Oversight, July 27, 2005.

Kris W. Kobach, Professor of Law at the University of Missouri (Kansas City) School of Law, has recognized that state and local police possess inherent *arrest* authority during his testimony before the House Committee on Homeland Security.<sup>77</sup> Kris Kobach advised the House Committee on Homeland Security that the inherent authority of local police to make immigration arrests was recognized by the Justice Department's Office of Legal Counsel (OLC) and was announced by Attorney General Ashcroft on June 6, 2002.<sup>78</sup>

Some law enforcement administrators and community leaders believe that the use of state and local law enforcement agencies as a force multiplier when dealing with immigration law is a necessity if we are going to successfully combat terrorism from within our own country. It has been documented that several of the terrorists who were involved with the attacks on 9/11 had interaction with state and local law enforcement officers prior to the attacks taking place. For example, four members of the 9/11 terrorist cohort were stopped by state and local law enforcement in the United States for routine traffic violations. In all four instances, the aliens were illegally present in the United States at the time of the traffic stop.<sup>79</sup> Additionally, a National Intelligence Estimate (NIE) clearly demonstrates that though "only a handful of individuals" have been discovered in the U.S. with ties to al-Qaeda, the expectation is that al-Qaeda will intensify efforts to put operatives in the United States, i.e., illegal immigration.<sup>80</sup> As a result of this type of intelligence, bright line and unequivocal enforcement of immigration law becomes the very front line defense for our first responders (federal, state and local), thus making them our first line defenders.

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<sup>77</sup> Kris Kobach, "State and Local Authority to Enforce Immigration Law: A Unified Approach for Stopping Terrorists," Center for Immigration Studies, June 2004.

<sup>78</sup> Kris W. Kobach, Testimony on the 287(g) Program, "Ensuring the Integrity of America's Border Security System through Federal-State Partnerships," before the House Subcommittee on Management, Integration and Oversight, July 27, 2005.

<sup>79</sup> Ibid.

<sup>80</sup> National Intelligence Estimate, "The Terrorist Threat to the U.S. Homeland," July 2007.

Research has shown that the State of Florida was the most aggressive state entity after the 9/11 attacks to request cross-certification through the 287(g) program. The State of Florida executed an MOA with the federal government on July 7, 2002. Under that agreement, 35 Florida law enforcement officers were trained for six weeks and were delegated specific immigration enforcement powers.<sup>81</sup> In the first year under the Florida MOA, the state and local officers trained in the 287(g) program made 165 immigration arrests, including the bust of a phony document production ring in Naples, Florida.<sup>82</sup> Subsequently, Alabama State Police were the next state entity to request the training and receive the authority granted under the 287(g) program. There are currently 63 agencies that have executed an MOA with DHS and currently have officers trained and cross-certified to carry out immigration enforcement under the 287(g) program.

However, using state and local law enforcement to help enforce federal immigration law has drawn criticism throughout the country. There are many who would like to make this issue strictly an emotional topic with their arguments against the enforcement of illegal foreign nationals. An article titled “Police Join Feds to Tackle Immigration” written by Daniel C. Vock, has advised that some say that deputizing state and local officers to help enforce federal immigration laws could hamper their ability to do their core duties, because it could prevent immigrants from reporting crime and could lead to racial profiling.<sup>83</sup> The Pew Hispanic Center reported that Hispanics in the United States are feeling a range of negative effects from the increased public attention and stepped up enforcement measures that have accompanied the growing national debate over

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<sup>81</sup> Kris W. Kobach, Testimony on the 287(g) Program, “Ensuring the Integrity of America’s Border Security System through Federal-State Partnerships,” before the House Subcommittee on Management, Integration and Oversight, July 27, 2005.

<sup>82</sup> Ibid.

<sup>83</sup> Daniel C. Vock, “Police Join Feds to Tackle Immigration,” Stateline.org, November 27, 2007.

illegal immigration.<sup>84</sup> The report went on to say that just over half of all Hispanic adults in the U.S. worry that they, a family member, or a close friend could be deported.<sup>85</sup>

Some believe that the enforcement of the current law would separate families inasmuch as illegal foreign nationals may have children who now qualify as U.S. citizens born within the U.S. Approximately five million U.S. children are residing within the nation with at least one undocumented parent.<sup>86</sup>

Some believe that the majority of illegal foreign nationals present in the U.S. are simply here to make a better living for themselves, and other than the original federal law violation of entering the U.S. without inspection or overstaying authority to visit the U.S., the illegal foreign nationals are not involved in criminal activity nor pose a threat to the U.S.

As noted in Chapter II, not all state and local law enforcement agencies believe they should be tasked with the added responsibility of enforcing federal immigration law. Some of these agencies believe there are several reasons for state and local law enforcement not to engage in the enforcement of immigration law: it is a federal responsibility, it undermines the trust and cooperation of immigrant communities (the chilling effect), lack of resources, complexity of federal immigration law, lack of local authority and state law limitations of authority, and risk of civil liability. The Major Cities Chiefs advised in a position statement on June 2, 2006, that local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account limited resources, the complexity of immigration laws, limitations on authority to enforce, risk of civil liability for immigration enforcement activities, and the clear need to foster the

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<sup>84</sup> Pew Hispanic Center, "2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill," Revised December 19, 2007.

<sup>85</sup> Ibid.

<sup>86</sup> Randy Capps, Rosa M. Castaneda, Ajay Chaudry, and Robert Santos, "Paying the Price: The Impact of Immigration Raids on America's Children," The Urban Institute for the National Council of La Raza, 2007.

trust and cooperation from the public including members of immigrant communities.<sup>87</sup> The International Association of Chiefs of Police had similar concerns. In its guide to police chiefs on immigration issues, the I.A.C.P. emphasizes that effective law enforcement depends on building trust in the immigrant communities, where suspicion of police is often present as the result of immigrants' experience with corrupt and violent law enforcement in their home countries.<sup>88</sup>

However, some believe that a consistent and balanced approach when dealing with illegal immigration will have a positive impact on our nation and our local communities. George L. Kelling and William Bratton wrote an article titled "Policing Terrorism" which stated that state and local law enforcement officers are primarily viewed as "first responders" to incidents rather than potential "first preventers" of terrorism. As a result, the United States remains far more vulnerable than it should be.<sup>89</sup> Chief Bratton believes some tactics that have improved criminal policing over the last two decades can also improve counterterrorism operations.<sup>90</sup> This idea revolves around the theory of order maintenance commonly called "broken windows." The use of this theory by state and local law enforcement agencies will increase our overall ability to disrupt and combat terrorism within the borders of the U.S. The application of the "broken windows" theory in the counterterrorist policing has two components. The first is creating a hostile environment for terrorists. The second is recognizing that terrorism's equivalents to subway fare beating are illegal border crossings, forged documents, and other relatively minor precursor crimes that terrorists often commit to fund the operations to prepare their attacks.<sup>91</sup> Some believe that the

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<sup>87</sup> Major City Chiefs Immigration Committee (M.C.C.), "M.C.C. Immigration Committee Recommendations: For Enforcement of Immigration Law by Local Police Agencies," June 2006.

<sup>88</sup> The International Association of Chiefs of Police, "Police Chiefs Guide to Immigration Issues," July 2007.

<sup>89</sup> George L. Kelling and William Bratton, "Policing Terrorism," CML Bulletin, No. 43, September 2006.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

enforcement of immigration law falls right in line with order maintenance, and if we as a nation provide consistent enforcement when dealing with this controversial issue, then we in turn will successfully disrupt and prevent crime and terror within our borders.

A commonality among the literature reviewed was the fact that many believe that the federal government is responsible for immigration policy and their lack of guidance on this issue has put the entire country at risk and in turmoil. Former Chief Darrel Stephens, Charlotte-Mecklenburg, NC, has stated, "Congress has to pass some type of immigration legislation. I think it's a horrible mistake for local police, in the absence of federal policy, to take on this role when we don't have the authority and we don't have the resources—to wrestle with issues like Chief Charlie Deane (Police Chief of Prince William County, Maryland) has with his board, establishing a policy that forces them to take a very active role in dealing with immigrant issues when their authority still hasn't been made clear and federal resources are not sufficient to support them."<sup>92</sup> Chief Melvin High, Prince George County, MD, advised that, "Our national government has let us down because they haven't addressed this issue."<sup>93</sup> Former Sheriff of Mecklenburg County Sheriff's Office, Jim Pendergraph has stated, "I strongly support the Office of the President of the United States and President Bush. However, I, and many others, strongly disagree with President Bush's policy, or lack of, on illegal immigration. The Congress of the United States has let us down by lack of action on the illegal immigration issue for decades, leaving those of us responsible for local law enforcement to deal with not only the fallout of the criminal element, but the ire of the public for their perception of our inaction on the federal issue."<sup>94</sup>

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<sup>92</sup> Police Executive Research Forum, "Critical Issues in Policing Series: Police Chiefs and Sheriff's Speak out on Local Immigration Enforcement," April 2008.

<sup>93</sup> Ibid.

<sup>94</sup> Jim Pendergraph, Former Sheriff Mecklenburg County Sheriff's Office, Written testimony for "Empowering Local Law Enforcement to Combat Illegal Immigration," August 25, 2006.

The role of state and local law enforcement when dealing with immigration law is one that is complex, dynamic, and controversial at best. Each community is comprised of its own specific needs and desires, thus making it very difficult to implement a one-size-fits-all approach with the issue of illegal immigration. However, the lack of a consistent approach across the country is placing the nation and all Americans at risk.

## **IV. INVOLVING STATE AND LOCAL LAW ENFORCEMENT AGENCIES: TITLE VIII, 287(G) PROGRAM**

### **A. 287(G) HISTORY**

Although some state and local communities may feel helpless when faced with the concerns and threats surrounding the issue of illegally-present foreign nationals, they do have the ability to get involved with the enforcement of immigration law. State and local law enforcement have an important role to play in federal immigration investigations. Section 287(g) of the Immigration and Nationality Act (INA) provides the legal authority for state and local law enforcement to investigate, detain, and arrest aliens on civil and criminal grounds.

U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency within the Department of Homeland Security, is responsible for enforcing federal immigration laws. However, this imperative responsibility can not be accomplished successfully without the establishment of state and local partners. One of ICE's top partnership initiatives, the 287(g) program, allows a state or local law enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement (MOA), in order to receive delegated authority for immigration enforcement within their jurisdictions.<sup>95</sup> The 287(g) program has emerged as one of the agency's most successful and popular partnership initiatives as more state and local leaders have come to understand how a shared approach to immigration enforcement can benefit their communities.<sup>96</sup>

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<sup>95</sup> U.S. Immigration and Customs Enforcement, Fact Sheet, "The ICE 287(g) Program: A Law Enforcement Partnership," November 19, 2008.

<sup>96</sup> Ibid.



Immigration and Customs Enforcement has advised that terrorism and criminal activity are most effectively combated through a multiagency / multi-authority approach that encompasses federal, state, and local resources, skills and expertise. State and local law enforcement play a critical role in protecting our homeland security because they are often the first responders on scene when there is an accident or attack against the United States. During the course of daily duties, they will often encounter foreign-born criminals and immigration violators who pose a threat to national security or public safety.<sup>97</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). This authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Understanding (MOU), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers.<sup>98</sup>

The cross-designation between ICE and state and local patrol officers, detectives, investigators, and correctional officers working in conjunction with ICE allows these local and state officers the necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering; and increased resources and support in more remote geographical locations.<sup>99</sup>

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<sup>97</sup> U.S. Immigration and Customs Enforcement, Fact Sheet, "Section 287(g) Immigration and Nationality Act," August 16, 2006.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

## **B. AUTHORIZATION FOR STATE AND LOCAL LAW ENFORCEMENT OFFICERS TO ENFORCE IMMIGRATION LAW**

In exercising its power to regulate immigration, Congress is free to delegate to the states, among other things, the activities of arresting, holding, and transporting aliens.<sup>100</sup> As a result, Congress created opportunities for state and local law enforcement officers to participate in the enforcement of federal immigration laws.

8 U.S.C. § 1357(g). One of the broadest grants of authority for state and local immigration enforcement activity stems from §133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which amended INA §287 (8 U.S.C. §1357 (g)).<sup>101</sup> This provision authorizes the Secretary of Homeland Security to:

Enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.<sup>102</sup>

Section 1357(g) allows for flexibility, which permits state and local entities to tailor an agreement with ICE to meet local needs.<sup>103</sup> 8 U.S.C. §1357(g)(2) requires that state officers “have knowledge of and adhere to” federal law governing immigration officers in addition to requiring adequate training regarding the enforcement of immigration laws.<sup>104</sup>

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<sup>100</sup> Lisa M. Seghetti, Stephen R. Vina, and Karma Ester, “Enforcing Immigration Law: The Role of State and Local Law Enforcement,” CRS Report for Congress, updated August 14, 2006.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

### C. CONSTITUTIONAL BACKGROUND

The power to create laws and regulations governing which aliens may enter the United States and which aliens may be removed is exclusively the domain of the federal government (U.S. Constitution Article 1 § 8, cl.3,4). The Supreme Court has never, however, held that every state or local action, which deals with aliens, is a regulation of immigration (*DeCanas vs. Bica* 424 U.S. 351,354 (1975)).

Standing alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.

Congress defined our nation's immigration law in the Immigration and Nationality Act (INA) (8 U.S.C. §§1101 *et seq.*), which contains both criminal and civil enforcement measures.<sup>105</sup> Historically, the authority for state and local law enforcement officials to enforce immigration law has been construed to be limited to the criminal provisions of the INA; by contrast, the enforcement of the civil provisions, which includes apprehension and removal of deportable aliens, has strictly been viewed as a federal responsibility, with states playing an incidental supporting role.<sup>106</sup> However, the legislative changes that were implemented in 1996 expanded the role of state and local law enforcement agencies in the civil enforcement of immigration law.

Exclusive authority to enact laws on immigration does not imply exclusive authority to enforce those laws.<sup>107</sup> It is now recognized that state and local police possess inherent arrest authority.<sup>108</sup> This authority is born out of a State's,

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<sup>105</sup> Lisa M. Seghetti, Stephen R. Vina, and Karma Ester, "Enforcing Immigration Law: The Role of State and Local Law Enforcement," CRS Report for Congress, updated August 14, 2006.

<sup>106</sup> *Ibid.*

<sup>107</sup> Lisa M. Seghetti, Stephen R. Vina, and Karma Ester "Enforcing Immigration Law: The Role of State and Local Law Enforcement," CRS Report for Congress, March 11, 2004.

<sup>108</sup> Kris Kobach, "State and Local Authority to Enforce Immigration Law: A Unified Approach for Stopping Terrorists," Center for Immigration Studies, June 2004.

at one time, status as a sovereign entity and courts have held that state law enforcement officers have the general authority to make arrests for federal violations (*U.S. v. Vasquez-Alvarez*, 176 F.3d 1294 (10<sup>th</sup> Cir. 1999)). This is referred to as a State's "police power" which is defined as "an exercise of the sovereign right of government to protect the lives... and general welfare of the people (*Manigault v. Springs*, 199 U.S. 473, 480 (1905)). States may take any action, including arrests, unless the U.S. Constitution prohibits the act or it has been pre-empted by Congress (*Manigault*). This is the point—"federal pre-emption"—Congress, using its exclusive plenary power over immigration, has pre-empted immigration law enforcement. However, that does not mean it has ruled against the enforcement of state statutes that involve immigration, nor when it is explicitly delegated, rather than pre-empted, those authorities by the Federal government.

Generally, Courts of Appeal that have addressed the issue of state and local officers arresting those in violation of federal law have held that the states possess the authority to arrest for federal immigration violations so long as the arrests are conducted consistent with state law. In 2002, Attorney General John Ashcroft, advised the existence of a new Office of Legal Counsel opinion and the departments view that state and local officials have "inherent authority" to enforce federal immigration law, including the civil enforcement provisions.<sup>109</sup> In citing an "Office of the Legal Counsel" opinion letter, Attorney General Ashcroft stated,

When federal, state and local law enforcement officers encounter an alien of national security concern who has been listed on the NCIC for violating immigration law, federal law permits them to arrest that person and transfer him to the custody of the INS. The Justice Department's Office of Legal Counsel has concluded that this narrow, limited mission that we are asking state and local police to undertake voluntarily—arresting aliens who have violated

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<sup>109</sup> Lisa M. Seghetti, Stephen R. Vina, and Karma Ester, "Enforcing Immigration Law: The Role of State and Local Law Enforcement," CRS Report for Congress, updated August 14, 2006.

criminal provisions of the Immigration and Nationality Act or *civil provisions* that render an alien deportable, and who are listed on the NCIC—is within the inherent authority of states.<sup>110</sup>

The power of a State to enforce federal law may however, be prohibited by Congress. In areas where state and federal powers occupy a field (such as police powers relating to arrests for a violation of federal immigration law), Congress can still prohibit state action. Congress' power to prohibit state law arises from the Supremacy Clause of the U.S. Constitution which states the "Laws of the United States shall be the Supreme Law of the Land...the laws of any State notwithstanding." In the absence of separate federal authority however, the State's police power extends only to arrest and officers lack authority to process, take sworn statements and transport arrested aliens.

#### **D. APPLICATION OF INA TITLE VIII, SECTION 287(G) AUTHORITY AT STATE AND LOCAL AGENCIES**

In 1996, Congress passed an amendment to the INA in the form of Title VIII, Section 287(g). INA 287(g) allows state and local law enforcement / correctional agencies to tailor an agreement with the Department of Justice (and later with the Department of Homeland Security) via a Memorandum of Agreement. This agreement must articulate the specific powers that are to be carried out by the agency, the duration of this authority, the training required of the selected officers, the level of supervision by Immigration and Customs Enforcement as well as provisions establishing various liability protections. The actual memorandum of agreement implementing the authority is usually generic in form. Each jurisdiction is faced with different needs and priorities; therefore, a nonspecific approach allows each agency to develop an operational agreement that is specific to the state's or community's needs.

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<sup>110</sup> Federal News Service, Press Conference with U.S. Attorney General John Ashcroft and James Zigler, Commissioner, INS, Re: Tracking of Foreign Visitors, June 5, 2002.

ICE pays for a five-week training course for participating officers. The training covers:

- Terms and conditions of the Memorandum of Agreement
- The scope of immigration authority
- Relevant immigration law
- ICE use of force policy
- Civil Rights law
- Policy on profiling based on race
- Outreach and complaint issues
- Liability issues
- Cross-cultural training
- Proper notification procedures to foreign consulates

ICE provides technology and technological support to allow participating agencies to access federal immigration databases. Additionally, ICE will reimburse agencies for housing and removing illegal foreign nationals once they are removed from local jails. ICE's total budget for the program is roughly \$26.2 million.<sup>111</sup> However; this limited budget has proven to be insufficient at this time due to the large increase in the number of agencies that are interested in participating in the 287(g) program. ICE officials are getting pickier about what local plans they will support, while encouraging police agencies to re-focus their enforcement efforts.<sup>112</sup> The limited budget and political pressure from outside influences has caused ICE to reassess their original strategy, which allowed agencies to check the immigration status during traffic stops.

ICE now offers two options (Task Force Model or Jail Model) for police agencies seeking the 287(g) program. The task force model permits officers to perform their normal duties and have the immigration authority as a complement to their day-to-day tasks. In some departments the 287(g) trained officers have

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<sup>111</sup> Daniel C. Vock, "States, Locals Swamp Immigration Program (287(g)'s Proving to be Successful)," Stateline.org, May 15, 2008.

<sup>112</sup> Ibid.

been dedicated solely to immigration-related investigations.<sup>113</sup> Their focus is typically on aliens convicted of criminal activity who are not in local custody, or involved in human trafficking, gang activity or document/identity theft investigations.<sup>114</sup> The jail force model trains correctional officers to screen arrestees and other inmates to make sure they're in the country legally. It is simpler in some regards, because the work is done at one location. In this model individuals are screened at the time of booking for birth in a foreign country.<sup>115</sup> If the arrestee has a foreign place of birth, the trained officers will follow-up to determine alienage and amenability to removal or deportation.<sup>116</sup> If that individual can be removed from the United States, then the state or local officers complete the necessary paperwork to be reviewed and signed by an ICE manager or on-site supervisor.<sup>117</sup>

As of September 2008, approximately 63 state and local agencies in 20 states had entered into 287(g) MOAs with ICE. Another 80 agencies have applied, and more than 840 state and local officers have been cross-trained (see Appendix A); however, many law enforcement administrators, community leaders and national citizens would argue that there needs to be more.

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<sup>113</sup> Ron Kidd, Regional Organized Crime Information Center, "287(g) Immigration Authority for State and Local Agencies," 2009.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

There has been limited research and literature available on the overall impacts, positive or negative, of the 287(g) program. Therefore, it is necessary for further research to be done in this area to evaluate the overall effectiveness and consequences of the program. Chapter V will provide a case study analysis of three agencies that are currently participating in the 287(g) program.



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## **V. CASE STUDY ANALYSIS**

### **A. RESEARCH OVERVIEW**

The focus of this section is the use of the Title VIII, 287(g) authorities among three agencies (The Collier County Sheriff's Office, Florida, Mecklenburg County Sheriff's Office, North Carolina, and the Alabama Department of Public Safety). The three agencies were chosen due to the length of participation with the 287(g) program and their variations involving the 287(g) problem. The Mecklenburg County Sheriff's Office functions strictly as a jail program, Alabama Department of Public Safety functions as a task force program, and the Collier County Sheriff's Office functions as both a jail program and a task force program.

The analysis involved a review of the implementation and use of the Title VIII, 287(g) program by each Office to fill the mission gap associated with the enforcement of immigration law. A detailed survey of their Title VIII, 287(g) program activities was sent to each agency to complete (see Appendix B).

The research examined the history, operations, strategies, and mechanisms by which the three programs were developed and implemented.

### **B. SURVEY FORMAT FOR THE 287(G) CASE STUDY**

A formalized survey pinpointing specific areas for review was sent to the three aforementioned 287(g) programs. The following ten survey issues were identified to provide a well-rounded review of program operations, administrative challenges, historical overview, justification, stakeholder involvement, community outreach, fiscal impact and program outcomes.

The information and data ascertained through the surveys was instrumental in identifying commonalities and uniqueness, which, in turn, allowed for an in-depth review of each program.

- Agency Title VIII, 287(g) program history/timeline (from inception to implementation to current status)
- Justification/reasoning/issues for instituting the 287g program
- Memorandum of Agreement (MOA) between the agency and ICE
- Challenges of implementing and maintaining the program
- Who are the stakeholders within the community and how did the agency reach out (market) the program to each of these groups?
- The number of deputies/officers currently involved with the program and the organizational structure of the program (Organizational/program chart if possible)
- Program strategy, enforcement and/or community out reach (please provide written strategy if it exists, if not what is the philosophical strategy)
- Metrics/data: 287g program activity such as number of detainees placed, illegal foreign nationals removed, how many are re-entries from prior deportations; how many were overstays (expired visas); and prior arrest history (average number of misdemeanor and felony arrests). If the program is being conducted in a corrections facility, what is the percentage of jail inmates who are illegal foreign nationals, country of origin
- Program outcomes (positive and/or negative impacts to the agency and community)
- Discussion points not addressed with the above questions

The case studies were reviewed to determine commonalities and differences and evaluate each program's uniqueness to the specific needs of their respective communities. Thus, how can the 287(g) program be utilized to fill the mission gap associated with the enforcement of immigration law?

### **C. COLLIER COUNTY SHERIFF'S OFFICE CASE STUDY**

In January 2007, the Collier County Sheriff's Office determined, through interviews with inmates in the Collier County jail, approximately one quarter of its jail population consisted of illegally-present foreign nationals. This was costing the County more than \$9 million per year in jail housing costs alone. In addition, more than 40 percent of felony warrants and 60 percent of murder warrants in

Collier County were discovered to be for illegally-present foreign nationals. This stunning information coupled with the homeland security concerns surrounding illegal immigration caused Sheriff Don Hunter to take formal measures to address the problem of safety, jail overcrowding, and escalating costs associated with detaining criminal aliens. In June of 2007, the agency entered into a Memorandum of Agreement (MOA) (see Appendix C) with the United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS). The MOA outlined the purpose, authority, policy, training, ICE supervision, and length of agreement. The Collier County Sheriff's Office 287(g) program became fully operational in October of 2007. Upon completion of the 287(g) training, Former Sheriff Don Hunter advised, "The new knowledge and skills that these deputies have, coupled with their prior law enforcement experiences and training will help make Collier County a safer place. Criminal illegal immigrants are committing crimes and victimizing our residents and it is our responsibility to investigate their immigration status thoroughly while investigating their other crimes. We now have resources and tools to do that."<sup>118</sup> In May of 2008, the program received its first ICE audit to make sure it was in full compliance with the MOA. The Collier County Sheriff's Office received verbal praise from the auditors for its compliance with the rules and regulations outlined in the MOA and its overall operational performance.

To date, 34 members of the Agency have graduated from ICE training and are authorized to perform certain immigration enforcement functions as specified in the MOA and Section 287(g) of the Immigration and Nationality Act. From this authority, the Collier County Sheriff's Office developed and implemented a "one drop—one stop" program known as the Criminal Alien Task Force (CATF) in October 2007.

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<sup>118</sup> Office of Public Affairs, U.S. Department of Homeland Security, ICE, News Release, "Collier County Deputies Complete ICE Training," September 18, 2007.

The CATF contains all the elements for processing and detaining legally and illegally-present criminal foreign nationals, such as: trained personnel in both the Corrections Division and the Law Enforcement Division, an Executive Office for Immigration Review (EOIR) which allows for court proceedings to be done via video conference; and a transportation unit that is responsible for transporting criminal aliens to federally-operated detention facilities as soon as the criminal alien has an immigration hold placed on him or her and upon completion of current criminal charges.

The selected deputies are divided into two separate, but related, task forces. The first task force operates inside the Collier County Sheriff's Office Naples Jail Center (Criminal Alien Task Force/Detention). The second task force operates in an investigative capacity throughout the county (Criminal Alien Task Force/Operations) (see Appendix D).

The CATF/Detention members are responsible for initiating contact with newly arrested and/or already detained inmates to determine legal status in the U.S. Fingerprints and identification documents are used to search several databases, including the ICE identification system. Subjects qualifying for detainers enter the detention and removal process and a deportation file is sent to ICE. Upon final order from a Federal Immigration Judge, deportation orders are processed and the subject is removed from the country after all sentences have been served.

The Criminal Alien Task Force/Operations is comprised of a coordinator and deputies from various divisions and districts throughout the agency including Street Gangs, Human Smuggling Unit, Criminal Investigations, Intelligence, Marine Patrol, Strategic Enforcement Team (S.E.T.), Driver License Bureau, and Fugitive Warrants. Each deputy brings knowledge of both the criminal and non-criminal elements in their area of operations. The CATF/Operations members operate in accordance with the agency CATF Operational strategy, which provides a strong focus on homeland security, organized crime, human trafficking, gang members, violent criminals, career criminals, sexual

predators/offenders, state and county probation violators, and warrant suspects (see Appendix E). The first phase identifies violent criminal aliens including gang members, violent felony offenders, career criminals and sexual predators. In phase two, CATF/Operations members identify other felony criminal aliens including those charged with identity theft, narcotics, and fraud. The final phase includes concentrating on lower-level crimes such as DUI and driving without a license. In addition, the CATF Operational members educate the community, particularly assisting local employers to ensure they are hiring authorized workers. In all phases, no arrest is made until the subject is approved by ICE. Removing the most serious and violent offenders will always remain a priority.

The CATF advised that there were several internal and external challenges for implementing and maintaining the program.

### **1. Internal Challenges**

CATF reported that they faced several problems from within their agency. These are described below.

- Developing an agency policy that conforms to ICE policies along with Federal and State law. The agency has developed standard operating procedures for the program.
- Initial training for 287(g) members to provide them the knowledge and ability to identify and qualify subjects into removal proceedings; and training members on how to properly complete alien files to place subjects into removal proceedings.
- Providing training to agency members who were not trained as 287(g) officers, so they would fully understand the implementation, focus and limits of the program.
- Providing legal training to agency members who were not trained as 287(g) officers, so they fully understood the legal boundaries of the 287(g) authority and to prevent immigration arrests outside of the 287(g) authority.
- Developing and implementing the proper administrative paperwork for tracking each encounter and arrest. The agency had to start from scratch.

- Developing and implementing an internal database to properly track and capture all necessary information. ICE did not provide a standardized tracking system, so the agency had to develop its own. The agency has created a database and reassigned an analyst to collect and maintain data on individuals processed through the 287(g) program. Statistical reports are produced and distributed bi-weekly for review. The following data is collected through the database:
  - **Demographic Information**
    - Name
    - Aliases
    - Physical Description
    - Current address
    - Last known address
    - Occupation
    - Employer information
  - **Criminal History Information**
    - Number of prior arrests
    - Disposition of prior arrests
    - Type of offenses
    - Level of offenses
  - **Law Enforcement Identification**
    - Local law enforcement ID number
    - 287(g) detention status
    - Country of birth
    - State ID number
    - FBI ID number
  - **Immigration Information**
    - Immigration status
    - Number of prior entries
    - Point of entry (location)
    - Manner of entry (EWI, etc.)
    - Country of citizenship

- **Jail Intake Information**
  - Total number of inmates interviewed to determine 287(g) status
  - Number of illegally-present jail intakes

## **2. External Challenges**

CATF also reported that they faced several problems arising from their local communities. These are described below.

- Educating the community on the facts of the program and how the program would be implemented and administered operationally throughout the county.
- Developing a public safety awareness video that explained the program in detail in order to reach out to as many of the community stakeholders as possible.
- Initially several immigrant advocacy groups objected to the program; however, as a result of continuous education and community outreach programs, they now have a better understanding of the program and its benefits to the community.
- Creating a comprehensive working relationship with the local ICE office out of Ft. Myers. Due to the logistics of ICE being in another county, it was challenging at times to coordinate communication and administrative duties. The relationship has grown into a seamless entity that works as one mechanism. Both agencies have created a strong bond and professional working relationship.
- Having an audit conducted by ICE to verify our compliance with the MOA; however, not being given any specific guidance on what the measurement areas were or what the process entailed.
- Obtaining approval from ICE to place all eligible criminal aliens (not just certain offenders) that qualify into removal proceedings in accordance with the MOA and Federal laws pertaining to the Immigration and Nationality Act (INA).

## **3. Stakeholders**

The Collier County Sheriff's Office realized that the 287(g) program involved a variety of stakeholders: minority groups, civic groups, faith-based groups, media outlets, local businesses, local government, and the community in



general. Therefore, the agency developed a community outreach and educational presentation which incorporated a PowerPoint presentation, brochures, and fact sheets prior to the operational implementation of the program. The agency worked hand-in-hand with the Greater Naples Chamber of Commerce, local businesses, the agency Minority Affairs Unit, Home Associations, faith-based groups, and the media to provide as much awareness and education on the program as possible. Sheriff Hunter, along with CATF staff, met with the General Consul of Guatemala, Honduras, El Salvador, and Mexico to explain the administrative and operational workings of the program so that they would have a full understanding of the 287(g) program. Additionally, the community outreach is still ongoing and the 287(g) deputies are continuously speaking throughout the county on the history of the program and how the program works.

The agency created one new position, CATF/Detention supervisor, as a result of the 287(g) program. The remainder of the staffing for the CATF was utilized from existing positions. The CATF advised that there have been no negative effects to existing agency responsibilities or duties as a result of utilizing existing positions. However, overall agency operations have evolved due to agency members bringing intelligence and information involving criminal aliens to 287(g) deputies in an attempt to identify, locate, and detain illegally-present foreign nationals who are involved or suspected of being involved in criminal activity.

The fiscal impact of implementing the 287(g) program has been very limited. There was no initial cost to the agency to train their deputies as cross-certified members of the 287(g) program due to ICE holding the training at the Collier County Sheriff's Office. In July of 2007, seven additional members were sent to South Carolina for 287(g) training at a per diem rate of \$1002.00 per person, which in turn cost \$7014.00 total. It is inherently difficult to quantify costs relating to the operation of a program which may be contributing to a significant drop in crime rate and jail population. Out of the three full-time CATF/Operations

positions, all three are currently funded through a grant. The remaining CATF/Operations deputies still remain in their primary assignment and assist with CATF responsibilities as needed. In addition, ICE reimburses the Collier County Sheriff's Office for costs relating to combined operations with the Agency and ICE. To a larger extent, a decrease in the crime rate, unusual in an economic downturn, has the effect of reducing jail, court, investigative, and operational costs to Collier County and the Collier County Sheriff's Office.

Six of the CATF/Detention positions are funded through a grant. The cost of housing inmates held only on ICE immigration charges is also reimbursed by ICE in the form of a daily rate per inmate, as well as a reimbursement for transportation duties. To date, ICE has reimbursed approximately \$203,783 to the Collier County Sheriff's Office for the cost of housing and transporting those inmates held solely on immigration charges. Additionally, the reduction in the Collier County Sheriff's Office jail population since the inception of the program is an additional cost savings to the agency. Additionally, ICE provides funding for joint operations. All of the necessary equipment and technology for the program have been provided by ICE at no cost to the Agency. At this time, it is not evident that there are any increased costs associated with the Collier County Sheriff's Office CATF 287(g) program, especially when viewed against a significant drop in crime and the daily jail population.

#### **4. The CATF Program from October 2007 through December 2008**

##### ***a. Corrections***

The CATF/Detention has conducted a total of 5,874 inmate interviews to determine legal status. Of those, nearly 70 percent were found to be illegally-present. From October 2007 to December 2008, a total of 1,080 detainers for removal have been written. The majority of detainers were for criminal aliens who entered the country without inspection (60 percent), 19 percent were under a final order to be removed, and 15 percent had re-entered

the country illegally after deportation. The remaining six percent were lawful permanent residents who were in violation of their status or lawfully admitted subjects who overstayed their visa (see Appendix F).

The majority of criminal aliens with detainers have been removed from the United States (62 percent). Eighteen percent (190 criminal aliens) are still in Collier County custody and the remaining are in federal custody or transferred to other facilities. A small number (two percent) of criminal aliens with detainers have had their case terminated or posted immigration bonds (see Appendices G and H).

#### ***b. Investigations***

The CATF/Operations has conducted a total of 220 (see Appendices I and J) formal investigations. The majority of investigations have resulted in detainers placed for removal (55 percent). For the remaining, 21 percent have been approved by ICE and currently 39 subjects (18 percent) are under investigation. Dozens more are currently under investigation or pending ICE approval. Many criminal aliens identified through the investigations component include very serious and violent offenders. In one case, the subject was previously arrested on multiple occasions for molesting children. Another subject had previously been deported and had a warrant in another state for the rape of a child with a firearm; he is also being prosecuted for murdering his eight-month-old daughter. Another subject is a documented MS-13 gang member previously deported after a gang-related shooting in another state.

Many criminal aliens investigated by CATF have been found to have fraudulent and counterfeit-related charges in their criminal pasts, and continue to obtain and use fraudulent identities to further their criminal careers. For instance, one subject with multiple arrests for robbery, burglary, drugs, and firearm charges was apprehended by CATF and charged federally. He used a false birth certificate to obtain U.S. ID, including a passport and driver license.

The CATF/Operations advised that they would never have been able to identify this subject had they not had access to immigration databases, because the birth certificate was real, but it was not his.

**c. *Prior Criminal Histories***

Criminal aliens removed from Collier County through the CATF program have extensive criminal records. On average, those detained from the jail have 4.7 prior misdemeanor arrest charges and 1.5 prior felony arrest charges each, for a combined total of 6.2 prior charges each. The criminal aliens removed through the investigations component have even more extensive criminal records— 6.5 prior misdemeanor arrest charges and 3.1 prior felony arrest charges, for a combined total of 9.7 prior charges each.

**d. *Jail Population***

In 2008, Collier County's jail population decreased by an average of seven percent from 2007. More recent months have seen much larger reductions (10-14 percent) when compared to the same month in the previous year (see Appendix K). This kind of drop in prison population is not being seen in our nation, the State of Florida, or surrounding counties including Lee, Broward, and Charlotte counties. This reduction in the Collier County jail population is notable and can be largely explained by the 287(g) partnership.

Groups sympathetic to illegal immigration argue that the illegally-present foreign nationals come to the United States to make a better economic living for themselves, thus they are no threat to the general public. A recent report from Justice Strategies advised that day laborers and drivers of color make poor law enforcement targets.<sup>119</sup> However, the criminal aliens being detained and removed by the Collier County Sheriff's Office 287(g) program are

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<sup>119</sup> Aarti Shahani and Judith Greene, A Justice Strategies Report, "Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement," February 2009.

averaging at least 6.2 prior criminal charges. Some of the criminal aliens removed have been involved in the following crimes: murder, rape, robbery, burglary, burglary while armed, carrying a concealed weapon, possession of a firearm, grand theft, drug trafficking, drug possession, domestic violence, child neglect, child abuse, kidnapping, extortion, DUI manslaughter, aggravated battery, fraudulent possession of ID, and aggravated reentry to name a few. Therefore, many law enforcement administrators, community leaders and public citizens would argue that the removal of murders, rapists, burglars, robbers, drug dealers, gang members, organized crime members and possible terrorist suspects are hardly poor law enforcement targets. The following are some examples of the criminal aliens who are being detained and removed by the Collier County Sheriff's Office 287(g) program.

## **5. Detainer/Deportation Examples**

### **ARREST HISTORY CRIMINAL ALIEN A:**

#### **Florida**

12-16-2007 DUI First Offense (Collier)  
12-16-2007 NVDL (Collier)  
12-16-2007 Possess Marijuana < 20 (Collier)  
09-22-1986 Fugitive from Justice (Collier)  
04-14-1978 Indecent Exposure (Collier)  
01-27-1976 Shoplifting (Collier)  
11-03-1973 Possess Marijuana (Belle Glade)

#### **Ohio**

02/04/1977 Rape- Strong-arm  
04/02/1986 Carry Concealed Weapon  
04/02/1986 Aggravated Menacing-4 counts  
06/12/1990 Drug Trafficking-Aggravated  
02/04/1992 Trafficking Drugs  
02/04/1992 Carrying Concealed Weapon

**Texas**

03/09/1973 Possess Stolen Vehicle

03/09/1973 Possess Marijuana

11/03/1973 Possess Marijuana

**Immigration**

10/27/1972 Immigration Violation

03/09/1979 Deportation Process

10/25/1994 Unlawful Re-entry into U.S. after Deportation

06/14/2001 Unlawful Re-entry into U.S. after Deportation

06/21/2002 Unlawful Re-entry into U.S. after Deportation

\*\*\* Aggravated Felon \*\*\*

**SUMMARY:**

Subject became known to the CATF by virtue of the Collier County Probation Office who suspected that a convicted subject was possibly unlawfully in the United States. A CATF investigation revealed the true identity of the subject as being different than the name he had given. The CATF investigation revealed the above arrest history and documented immigration history, which was confirmed through fingerprint comparison and photographs. The CATF investigation also revealed that the subject entered the United States without inspection in 1972.

While in the United States, the subject has accumulated numerous arrests in Florida, Ohio, and Texas. The CATF investigation further revealed that the subject unlawfully obtained a friend's personal information while living in Ohio. The subject used that information to obtain an Ohio birth certificate, social security card and Florida driver license. Subject also used this information to claim that he was a citizen of the United States.

An arrest warrant affidavit has been completed and forwarded to the State Attorney's Office for review and approval for identity theft and related offenses against the subject. The CATF recently received information regarding the subject's whereabouts and has been working with the ICE DRO Office to coordinate subject's apprehension.

**ARREST HISTORY CRIMINAL ALIEN B:**

07/29/05 Guilty–Prostitution  
02/14/04 Guilty–Trespassing  
01/10/04 Guilty–Battery  
10/10/03 Guilty Trespassing  
07/14/02 Withheld–Affray  
09/15/01 Guilty–Robbery  
08/27/01 Guilty–Carrying concealed weapon  
12/12/99 No info–Burglary  
02/09/99 Guilty–Retail theft  
01/01/99 No file–Aggravated Battery  
12/07/98 Guilty–Carrying concealed weapon  
05/21/97 Guilty–Posses crack cocaine/w intent  
05/21/97 Guilty–carrying concealed firearm

**SUMMARY:**

The subject became known to the CATF by virtue of his extensive arrest history. A CATF investigation revealed that the subject was a citizen of Mexico and was in the U.S. illegally. A CATF investigator and an ICE agent made contact with the subject at his home in order to arrest him for administrative immigration violations. The subject denied that he was the subject and produced a Florida driver license and authentic U.S. passport in the name of “Eddie Ortiz.” These documents stated that the subject (Ortiz) was a U.S. citizen born in Puerto Rico. When questioned further by CATF investigator, the subject admitted that he fraudulently obtained the identifications by procuring and using an authentic Puerto Rican birth certificate purchased for \$1000. This document was used at a local DMV to obtain a Florida driver license which, in turn, was used to obtain an otherwise valid U.S. passport in the fraudulent name, but with the subject’s actual photo. The subject was arrested on the immigration charges and subsequently federally indicted on several charges including obtaining a U.S. passport by fraud. The subject is still in ICE custody pending the completion of these cases.

**ARREST HISTORY CRIMINAL ALIEN C:**

05/08/00 Guilty–Possess firearm

12/5/00 Withheld–Drug possession

04/02/01 Guilty -Aggravated Assault

**MEMBER MS–13 gang**

Prior Deportation as aggravated felon

**SUMMARY:**

The Collier County Sheriff's Office gang task force received intelligence that an active MS–13 gang member had recently moved to the area. The intelligence report also stated that this individual's crimes included aggravated assault with a firearm (gang-related drive by shooting). A CATF investigation revealed that the subject is a citizen of Mexico and had previously been deported from the United States as an aggravated felon. CATF and gang task force members made contact with the subject at his home and arrested him on criminal and administrative immigration charges. The order for deportation has been reinstated and criminal charges for re-entry of an aggravated felon are pending.

**ARREST HISTORY CRIMINAL ALIEN D:**

2/20/07 Guilty–Burglary while armed

2/20/07 Nolle Pros–petty theft

6/08/06 Guilty–Burglary unoccupied structure

6/08/06 Guilty–Petty theft

1/22/06 Guilty–Grand theft from a dwelling

1/22/06 Guilty–Burglary unoccupied conveyance

**SUMMARY:**

The subject has been convicted multiple times of burglary and theft and is believed to have been involved in many other unsolved burglaries in Immokalee. After a third conviction for burglary, the subject was sentenced to time served and released. A CATF investigation was initiated and revealed that the subject was in the United States illegally. ICE approved the arrest and the subject was subsequently located by CATF and Strategic Enforcement Team members working in Immokalee. The subject was arrested on administrative immigration charges, processed, and subsequently deported from the United States.



**ARREST HISTORY CRIMINAL ALIEN E:**

12/03/08 Aggravated manslaughter (child)

03/26/08 Child Abuse

03/26/08 Child Neglect

10/29/07 Warrant: Rape by Force/ Sex by force on child under 16

10/26/07 Guilty–False info on License

**SUMMARY:**

In October of 2007, CATF received a phone call from Major Crimes investigations concerning the suspected murder of an 8 month old girl. Investigators informed CATF investigators that they were concerned that the suspect might flee the area or even the country. In addition, the subject had an active warrant out of California for forcible rape of a child under 16; however, California would not extradite. An investigation by CATF revealed that the subject was a Mexican national in the U.S. illegally and had been deported twice previously. As the remainder of the subject's family and the neighboring community were in danger, CATF investigators arrested the subject on immigration charges and transported him to the Collier County Jail. While inventorying property, it was discovered that the subject had obtained a Florida driver license under a different name. In order to obtain this driver license, the subject had purchased a valid Puerto Rican birth certificate and presented it as his own. The subject was in possession of both the license and the Puerto Rican birth certificate.

While the subject was serving his time for the driver license charges and awaiting deportation, Collier County Major Crimes investigators completed the murder investigation and charged the subject with manslaughter, child abuse, and child neglect. Charges are pending.

**ARREST HISTORY CRIMINAL ALIEN F:**

10/19/07 Possess concealed firearm

03/07/03 Guilty–Fraud

03/07/03 Guilty–Larceny

03/06/03 Fraud

02/08/03 Guilty–Fraud

02/08/03 Nolle–Extortion

02/08/03 No info–Kidnapping

05/06/98 Adj with–Robbery

05/01/98 Robbery

02/15/98 Guilty–Larceny  
04/18/96 Guilty–Larceny  
10/02/94 Nolle–Prostitution  
09/18/93 Larceny

**SUMMARY:**

Subject became known to the CATF by virtue of the District 2 Special Enforcement Unit. The unit had recently discovered a trailer full of stolen property at the subject's residence and he was subsequently a subject of interest for numerous burglaries throughout the county. A CATF investigation revealed that the subject had entered the country in 1996 on a student visa but had overstayed that visa and was in violation of the visa requirements as he was not attending school. The subject was located by CATF and arrested on administrative immigration charges. The subject's case is scheduled for a deportation hearing on 6/23/09 and he is currently on an ICE order of supervision.

**6. Summary**

The 287(g) program was initiated to specifically identify and remove criminal aliens from Collier County, especially those who have committed violent crimes or are repeat offenders. Additionally, the Collier County Sheriff's Office had homeland security concerns due to the fact that approximately 25percent of their jail population had self-admitted that they were illegally-present foreign nationals, therefore, the proper identification and checks had not been conducted on those subjects prior to entering the country. The program advised that as of December 2008, they had removed over 1000 criminal aliens who average at least 4.7 prior misdemeanor arrest charges and 1.5 prior felony arrest charges. The program was never intended nor is it used to conduct roadside enforcement, sweeps of businesses, farm fields or immigrant communities. To date the program has removed criminal aliens from over 52 different countries of origin (see Appendix L). The agency has implemented a comprehensive 287(g) program that incorporates both the jail program and the law enforcement program, so that they compliment each other and work as one entity. The program has assigned some of the cross-certified members full-time to the 287(g) program; however the vast majority of the cross-certified members still

remain in their full time positions, so that they can maintain their normal duties and responsibilities. However, they continue to collect information pertaining to criminal aliens during their normal course of business and they assist the full time members when needed.

The program advised of the importance in establishing a 287(g) program outreach component. They conducted community awareness and informational meetings prior to the program becoming operational. They continue to conduct educational meetings and program updates as part of the community outreach plan.

The cost of implementing and maintaining the program has been minimal, especially when compared to the results of lowering the daily jail population by approximately 10 percent as compared to daily jail population prior to the program being initiated. Additionally, the removal of recidivist offenders from the local criminal justice system is a savings for the agency, court system and tax payers in general.

The program did identify internal challenges such as: developing agency policy that conforms to Federal and State law, the development of agency standard operating procedures, the development of an enforcement strategy, the initial training for cross-certified members to provide them with the necessary experience and knowledge to identify and qualify subjects into removal proceedings, the necessity to provide informational training to all members of the agency so they fully understood the 287(g) program, the development and implementation of the necessary administrative paperwork for tracking each investigation and arrest, the lack of a standardized ICE database to properly track and capture information; thus it was necessary for the agency to develop its own database in order to collect and analyze all pertinent information.

Additionally, the program identified external challenges such as: the necessity to properly develop a community outreach program that incorporated all of the stakeholders on the facts of the program and how the program would be

administered prior to making the program operational throughout the community, the lack of guidance by ICE in the area of the audit and what the standards/measurable goals would be, the inability to access all of the necessary immigration databases, so their investigations could be conducted in a more efficient and effective manner.

#### **D. MECKLENBURG COUNTY SHERIFF'S OFFICE CASE STUDY**

Around 2000, Sheriff Jim Pendergraph (retired) Mecklenburg County Sheriff's Office (MCSO), noticed an increase in the number of arrests of suspected illegal immigrants for state charges, the majority being for DWI and domestic violence. In addition, he observed his jail population of illegal immigrants rise to approximately 20 percent. The MCSO realized that the positive identification of these subjects was next to impossible, and they knew there were many illegal immigrants, some with felony convictions, who were posting bond and walking out of the jail daily. The problem was that the only true positive identification of these arrestees was by fingerprinting; however, only ICE personnel had access to federal immigration databases.

It was at this time that Sheriff Pendergraph searched for a solution on the identification of criminal illegal immigrants. In late summer 2005, Sheriff Pendergraph was informed about the 287(g) program, and he immediately filled out a program application and forwarded it to ICE in Washington, requesting to be part of the program. Within sixty days, the request was approved.

In February 2006, MCSO entered into a partnership with the Department of Homeland Security to identify individuals arrested in Mecklenburg County who are in the country illegally. This process, known as the 287(g) program, allowed the MCSO to become the first Sheriff's Office east of Phoenix to perform this function.

During March of 2006, Immigration and Customs Enforcement (ICE) officials trained twelve deputies to carry out certain duties traditionally handled by federal immigration officers. The MCSO began full implementation of the 287(g) program on May 1, 2006. The MCSO 287(g) cross-certified deputies now operate within the Mecklenburg County Jail facilities to interview foreign national inmates to determine whether there is probable cause for an immigration violation; complete the processing for criminal aliens including fingerprinting; prepare documentation to place aliens in deportation proceedings concurrent with their prison term; and prepare documentation to deport aliens following their terms. In addition, they refer criminal aliens to the ICE Office of Investigations for potential criminal prosecutions.

MCSO advised that every arrestee is asked two questions regarding their citizenship: "Were you born in the United States?" and "Are you a U.S. citizen?" Anyone answering no to either or both questions, is fingerprinted and a recognition photo is taken and submitted electronically to ICE.<sup>120</sup> At this point, the initial entry is made into the ICE system regarding the circumstances and pending charges along with fingerprints and photos. The work is all completed by ICE-trained 287(g) deputies who are cross-certified federal officers. Depending on the current charge(s), prior records and convictions, and prior deportations, the arrestee is either given a Notice To Appear (NTA) in Immigration Court or a detainer is placed on the arrestee and they are marked for deportation. Individuals detained for ICE must answer for their state and local charges before being transported to the Immigration Court for deportation. To date, 20 deputies have been 287(g) certified and trained and there are currently 13 deputies operating under the 287(g) cross-certified authority.

The Mecklenburg County Sheriff's Office advised that there were several internal and external challenges associated with implementing and maintaining the program.

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<sup>120</sup> Sheriff Jim Pendergraph, Border Issues, "What the Section 287(g) Program Can Do for Your Community," April 2007.

## 1. Internal Challenges

MCSO reported that they faced several problems from within their agency. These are described below.

- Establishing clarity for ICE guidelines and policies
- ICE procedures change frequently; therefore, it is a continuous issue to keep up with the proper paperwork and what is needed to properly complete the file.
- Access to certain ICE databases has been limited or not approved in certain instances, which in turn makes it more difficult to complete the mission.
- Connectivity, usage, and security issues related to ICE databases.
- Collecting the necessary data for proper tracking. This is still a work in progress. We feel that we are collecting all essential data; however, from time to time we may identify data that needs to be collected and evaluated. For example, types of criminal offenses. The following information is collected through the database:

- **Demographic Information**

- Name
- Aliases
- Physical description
- Current address
- Last known address

- **Criminal History Information**

- Number of prior arrests
- Locations of prior arrests

- **Law Enforcement identification**

- Local number
- 287(g) detention status
- Country of birth

- **Jail Intake Information**

- Inmates interviewed to determine 287(g) status
- Number of Illegally-present jail intakes
- State number
- FBI number

## **2. External Challenges**

MCSO also reported that they faced several problems arising from their local communities. These are described below.

- The need to constantly communicate with other agencies on the 287(g) program and how it works
- Continuously providing community stakeholders with factual information about the program and how it works
- Ensuring that ICE will pickup prisoners in a timely manner, in order to assist with jail population
- Learning what information and whom it may be given to under Federal law and guidelines
- Learning ICE procedures for females, pregnant/recently pregnant or breast feeding
- Learning ICE procedures when dealing with juveniles
- Billing/reimbursement issues
- Having an ICE audit conducted on the program however, not being advised of what the specific audit requirements/review processes would be prior to the audit

## **3. Stakeholders**

The Mecklenburg County Sheriff's Office realized the importance of stakeholder buy in so that the 287(g) program could be a success. Sheriff Pendergraph advised that one of the smartest decisions he made with the 287(g) program was informing the news media and community of his intention to partner with ICE very early in the process. He advised that immediately after applying for the program, he called a press conference and community meeting to inform everyone about the 287(g) program and what he hoped it would do for the community. Sheriff Pendergraph advised that the Latino media, supportive of the Latino community that represents the largest illegal immigration population, was suspicious of the program.<sup>121</sup> Latino community advocates voiced loud concerns

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<sup>121</sup> Sheriff Jim Pendergraph, Border Issues, 'What the Section 287(g) Program Can Do for Your Community,' April 2007.

of profiling and increased arrests for minor traffic offenses, resulting in deportation. However, Sheriff Pendergraph advised that the facts speak for themselves: arrests for traffic offenses and misdemeanors of illegal immigrants were actually decreased since the 287(g) program started in Mecklenburg County.<sup>122</sup> The MCSO has identified numerous stakeholders: migrant communities, minority groups, civic associations, media, faith-based groups, local businesses and other law enforcement agencies. The MCSO realizes the importance of these stakeholders and stays in constant contact with them regarding the program. They provide a quarterly meeting designated to educate and provide information about the 287(g) program and how it operates in Mecklenburg County. They also provide all media outlets with a monthly report of arrests involving identified illegal immigrants and deportation statistics. Sheriff Pendergraph advised that the community at large is very supportive of the 287(g) program.<sup>123</sup>

The MCSO added 12 new positions to support the new 287(g) program. The twelve deputy positions were funded with excess revenue generated from housing more federal inmates than originally projected for the year.<sup>124</sup> The County Manager and the Board of County Commissioners have been very supportive of the program. ICE provided and installed the Automated Fingerprint Identification System equipment and a photo recognition system at the processing center.

#### **4. Outcomes and Descriptive Statistics of the MCSO 287(g) Program**

The 287(g) program has allowed the MCSO to more accurately identify individuals who are arrested and brought into the jail receiving facility. More importantly, it has helped to remove an element of criminals who are illegally

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<sup>122</sup> Sheriff Jim Pendergraph, Border Issues, "What the Section 287(g) Program Can Do for Your Community," April 2007

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.



present; therefore, reducing recidivism. Since the implementation of the program over 5,800 criminal aliens have been processed and placed into removal proceedings. Of the 5,800 subjects processed 420 were previously removed and re-entered in the U.S. To date the program has removed subjects from over 72 different countries (see Appendix M). The program has brought a significant amount of attention to the sheriff's office, which in turn has been a catalyst for making the community more interested and involved with issues related to crime, jail overcrowding, and resources needed by law enforcement to carry out the mission. The only negative impact to the MCSO has been the non-support from the Latino community and their fear of being identified and deported. This lack of trust and understanding has led to bad or inaccurate information being spread throughout the community.

## **5. Summary**

The 287(g) program was initiated to specifically identify suspected illegal immigrants who had committed crimes within Mecklenburg County; therefore allowing the Mecklenburg County S.O. to access the necessary federal immigration databases so that a true identification of the suspects could be conducted. The Mecklenburg County S.O. 287(g) partnership is a jail program. The program advised that they check the citizenship of every arrestee that is processed through their jail facility. The program advised that as of January 2009, they have removed over 5,800 subjects. To date the program has removed subjects from over 72 different countries of origin.

The program has 13 deputies assigned full time to the 287(g) program. The program has been funded with excess revenue generated from housing more federal inmates.

The program did identify internal challenges such as: establishing clarity for ICE guidelines and policies, the issue of keeping up with ICE procedures and paperwork due to the frequency of changes, the inability to access certain immigration databases has made the process more difficult, the connectivity,

usage, and security issues related to ICE databases, the lack of a standardized ICE database for the collection and tracking of all necessary information.

Additionally, the program identified external challenges such as: the importance of continuously communicating with community stakeholders, ensuring that ICE will pickup prisoners in a timely manner, learning what information and whom it may be given to under Federal law and guidelines, learning ICE procedures for females, pregnant/recently pregnant or juveniles, billing/reimbursement issues, and the lack of guidance from ICE on the audit process and what standards/requirements would be reviewed and measured.

#### **E. ALABAMA DEPARTMENT OF PUBLIC SAFETY**

In early 2003, Governor Bob Riley's office approached the Immigration and Naturalization Service. This contact was precipitated by the increase in forged documents presented by individuals applying for Alabama driver license and non-driver identification cards, and the lack of presence of and access to Immigration officers. At the time the governor's office contacted the federal agency, there were only three INS officers in the entire state of Alabama.

In September 2003, the state of Alabama signed a memorandum of understanding (MOU) with the U.S. Department of Homeland Security. This memorandum was authorized by the Immigration and Nationality Act of 1996, as amended by §133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; codified at 8 U.S.C. §1357(g). The Alabama Department of Public Safety began implementation of the 287(g) program in 2003 and it has been fully operational ever since. The agency received its first ICE audit in 2008.

When the Alabama Department of Public Safety entered into the MOU, it believed it was the right course of action due to terrorism, community safety and the increase in identity theft. Now, many years later, they can say with certainty the 287(g) program was and remains the right course of action.

The first training class of 21 troopers began September 3, 2003, and was comprised of a five-week course taught at the Center for Domestic Preparedness near Anniston, Alabama. The subjects covered during the training included Nationality Law, Immigration Law, Document Inspection and Fraudulent Documents, Bias-based Policing, Statutory Authority, Removal Charges, and Juvenile Processing. There are currently 55 troopers trained and working in the 287(g) program. The troopers are assigned to the Highway Patrol, Driver License or Executive Protection Divisions. The Department utilized existing positions to staff the 287(g) program. The 55 cross-certified troopers are not federal immigration officers. They remain Alabama state troopers with primary duties in the Alabama Department of Public Safety's Highway Patrol, Driver License, and Executive Protection Divisions, and that is why the 287(g) program has been so successful in Alabama. The troopers enforce federal immigration law only while carrying out their regular duties as Alabama state troopers. The Department advised that the 287(g) program has had no negative effects on the normal duties and responsibilities of the troopers who are cross-certified as ICE Troopers.

The Alabama Department of Public Safety advised that there were several internal and external challenges for implementing and maintaining the program.

#### **1. Internal Challenges**

CATF reported that they faced several problems from within their agency. These are described below.

- Continually training new troopers on the 287(g) program and keeping up with ICE procedures and training. This continues to be an ongoing issue.
- Continuous training on legal authority due to court rulings and new laws.

- Getting new 287(g) Troopers trained on how to use IT equipment and databases. This continues to be an ongoing issue. Alabama Department of Public Safety did advise that they do not collect or maintain data on individuals processed through the 287(g) program.

## **2. External Challenges**

Alabama Department of Public Safety reported that they faced several problems arising from their local communities. These are described below.

- There are currently only three jails available for Detention and Removal (DRO) of illegal aliens in Alabama. Therefore, it can be challenging to coordinate the delivery of suspects in a timely and efficient manner.

## **3. Stakeholders**

As part of the MOU, the department has developed an outreach program to communicate with constituents the purpose of Alabama's involvement in the 287(g) program. The outreach began when Juan Carlos Lara, a consular officer with the Mexican Consulate in Atlanta, Georgia, addressed the troopers at the Center for Domestic Preparedness. The department also hosted a program in Montgomery, Alabama, for leaders of foreign national organizations and Department personnel have taken part in many panel discussions at various gatherings of foreign nationals in Birmingham and other locations throughout the state. The Department's Public Information staff has appeared on many radio talk shows whose target audience is foreign nationals. The department realizes that there are many stakeholders such as minority groups, media, other law enforcement agencies, and state legislatures; therefore, the main point the department works to communicate is that Alabama's program is reactive, not proactive, and that troopers will have state probable cause before they arrest anyone under their ICE authority.

Under the terms of the MOU, the Department spent about \$40,000 in overtime and other expenses during the training of the first 21 troopers. The Department of Homeland Security paid the remaining costs for training. To date there has been no cost for necessary items, such as equipment and technologies, needed to implement the 287(g) program because ICE has provided all necessary equipment and technologies.

#### **4. The Outcomes and Descriptive Statistics of the Alabama Department of Public Safety Program—2003 through 2008**

Since the implementation of the program in 2003, the 287(g) cross-certified troopers have made more than 450 arrests of illegal immigrants during their regular duties; most of these cases have been accepted for federal prosecution. Many of these arrests were of previously deported illegal immigrants with felony convictions. The cross-certified troopers also have made two cases of bulk cash smuggling (§31 USC 5332) and seized \$690,113.

#### **5. Detainer/Deportation Examples**

The first arrest was of a Korean man who applied for an Alabama driver license. He presented as his own a resident alien card belonging to a female. When the driver license examiner ran an NCIC report, which is routine procedure in Alabama, the examiner learned the applicant had prior convictions for armed robbery and two cases of possession of controlled substances. An ICE trooper detained the subject until ICE officers arrived.

On November 22, 2004, Alabama State Trooper 287(g) Corporal Susanna Capps encountered Uchechukwuka Patience Odita at the Driver License Office in Opelika; Alabama. Odita presented a fraudulent U.S. passport and social security card to Corporal Capps as proof of identification. Odita was identified as an illegal alien from Nigeria. When Corporal Capps placed Odita under arrest, she proceeded to resist arrest and attempted to flee the scene. During the arrest, Odita pushed a driver license examiner to the ground and fell on him, thereby

breaking his arm. She had to be subdued with pepper spray and a baton. Oditia was charged with Criminal Possession of a Forged Instrument, Assault, Resisting Arrest, and Criminal Mischief. Corporal Capps filed a Form I-247 Immigration Detainer with the Lee County jail. This case was presented and accepted for federal prosecution by the U.S. Attorney's Office.

On March 22, 2006, Alabama State Trooper 287(g) Corporal Jessie Williams encountered Plucario CALVILLO-Palacio, a native and citizen of Mexico, at the Alabama Driver License Office in Dothan, Alabama. CALVILLO-Palacio presented a Form I-765 Employment Authorization Card while applying for a driver's license. Corporal Williams conducted a record check with the Law Enforcement Support Center (LESC) and discovered that CALVILLO-Palacio had a previous conviction in Los Angeles, California for the offense of Annoying/Molesting a Child under 18. CALVILLO-Palacio was taken into ICE custody and transported to the Etowah County jail in Gadsden for detention purposes.

On January 21, 2007, the Alabama State Trooper received a BOLO (be on the look out) for a vehicle traveling from the Tampa, Florida area. The vehicle was occupied by several illegal aliens that were being held against their will by at least two other illegal aliens. The FBI in Tampa, Florida tracked the vehicle through the cell phone of one of the aliens inside the vehicle. Alabama State Troopers located the vehicle near Dadeville, Alabama and conducted a felony stop. Alabama State Trooper 287(g) Jackie Hamby assisted with the stop and conducted the interviews of all five individuals. It was learned through interviews that three individuals inside the vehicle had paid the driver and co-driver to drive them from Phoenix, Arizona to Tampa, Florida and Memphis, Tennessee. One of the passengers was arranging to be delivered to family members in Tampa, Florida when the smugglers wanted more money. The family was unable to provide more money so the smugglers stated that he could not leave and they proceeded to leave Florida with him and the other two individuals in the vehicle. All three individuals identified the driver and co-driver as smugglers they met at a

“stash” house in Phoenix, Arizona. These two individuals switched out driving the trip through the United States. While in Florida, they observed one of the smugglers purchasing a firearm from another Hispanic male. This firearm was found inside the vehicle by State Troopers. The firearm was listed as stolen in NCIC. One of the smugglers admitted that he purchased the firearm. The smuggling suspects were taken into ICE custody and held for prosecution.

Alabama Department of Public Safety believes that their 287(g) MOU with DHS, ICE, is a reasonable, commonsense platform that results in a win-win outcome for both the law enforcement community and for the citizens whom they serve.

## **6. Summary**

The 287(g) program was initiated to combat terrorism, the increase in forged documents presented by individuals applying for Alabama driver license and non-driver identification cards, increase community safety, and the lack of presence of and access to Immigration officers. The program advised that since the implementation of the program in 2003, they have made more than 450 arrests of illegal-foreign nationals during their normal duties. The agency advised that they do not have a database specific to collecting and tracking the 287(g) subjects and the information associated with these subjects. The agency has 55 troopers assigned and working as 287(g) cross-certified officers; however, their primary duties still remain in the Highway Patrol, Driver License and Executive Protection Divisions. The troopers only enforce federal immigration law while carrying out their regular duties and that the program has had no negative effects on the normal duties and responsibilities.

The cost of implementing and maintaining the program has been minimal as a result of the troopers still maintaining their normal responsibilities. ICE has paid for the training and the necessary equipment associated with the 287(g) program.

The program advised of the importance of developing a strong community outreach program prior to the program implementation. The program maintains a proactive community outreach plan throughout the state of Alabama.

The program did identify internal challenges such as difficulty in continually training new troopers and keeping up with changes pertaining to ICE procedures, continuous training on legal authority due to court rulings and new laws, receiving the necessary training on how to use the assigned IT equipment and ICE databases.

Additionally, the program identified the external challenge of only three jails available for Detention and Removal of illegal aliens in the entire state of Alabama; therefore, making it difficult to coordinate the delivery of suspects in a timely and efficient manner.

## **F. ANALYSIS**

Review of the three programs show several characteristics, which they had in common, and several that showed how each community adapts to its local needs. The following offers seven points of comparison.

- All three programs put forward a strategic enforcement approach that concentrated on illegally-present foreign nationals who had committed criminal acts within the United States. They did not participate in work place enforcement or farm sweeps. Their efforts concentrated on removing criminal aliens from their respective communities.
- The emphasis to develop, implement and maintain an ongoing public awareness and community outreach program that involved all of the community stakeholders. All three programs were specific on how critical it was to educate the community on how the 287(g) program operates and to reassure migrant communities and all residents that victims and witnesses of crimes are not targets of their 287(g) program.
- The need for clearer guidance from ICE in the areas of program goals and objectives, policy and procedures, administrative paperwork, audit/inspection process, how and when the 287(g) authority is to be administered, implementation and maintenance of the program.



- The cost for the 287(g) program was minimal, especially when compared to the long term cost savings. The Collier County Sheriff's Office, the Mecklenburg County Sheriff's Office and the Alabama Department of Public Safety have removed a large number of criminal aliens from their respective communities, thus increasing public safety and reducing the costs associated with recidivism. Additionally, the Collier County Sheriff's Office has seen considerable drops in their inmate population, and while it is understood that many factors contribute to jail population trends, the drop of 10 percent since the inception of the program is difficult to ignore. The long-term savings, both in monetary and safety terms, are realized when illegally-present immigrants committing criminal offenses in their respective communities are removed from the criminal justice system's revolving door.
- The need for ICE to provide a standardized database for all 287(g) participants so that all necessary program information and data can be entered, tracked, reviewed and measured.
- The need for ICE to provide access and the associated training to all immigration databases, so the program and its participants can review all of the required information in a more timely and effective manner.
- The need for a more effective transportation and housing plan once the subjects have had a detainer placed on them.

## **VI. CONCLUSION AND RECOMMENDATIONS**

### **A. CONCLUSION**

It is clear that the issue of immigration enforcement is one that is surrounded by political climate, emotions, controversy, and concerns; which in turn makes it one of the most difficult areas facing law enforcement today. The Nation's vulnerability to terrorism, crime, and community destabilization is intertwined in complex and controversial ways with illegal immigration. After decades of wild swings in immigration enforcement policies, Congress recognized in 1996 that state and local law enforcement agencies could assist the federal government in combating mounting problems. State and local governments, in turn, also recognized that in the absence of effective federal enforcement, they had to become more involved in enforcing their own statutes and protecting their own residents.

The issue of state and local enforcement of immigration-related matters, however, has become highly contentious. Much has been written about it, but little data has been collected on what these enforcement programs actually do, rather than what supporters and opponents hope or fear they will do.

The purpose of this thesis was to begin to examine several situations in which state and local agencies have implemented the 287(g) program, which grants under limited conditions law enforcement agencies the authority to use immigration-related information to advance local policing efforts. In earlier chapters, I have reviewed the link between illegal immigration and terrorism, varying opinions pertaining to the use of the 287(g) program, the legal rationale for delegation of authority for immigration enforcement from federal to state and local agencies, and examined three cases in which police agencies have begun to use these new authorities.

Overall, the research shows the ability for state and local agencies to use a decentralized approach to remove illegal foreign nationals who have committed crimes, especially violent crimes; thus increasing public safety and homeland security to our local communities, states and the nation as a whole. The 287(g) program allows state and local law enforcement agencies—the ones responsible for protecting their local communities and those coming into contact with criminals on a daily basis—the ability to investigate, process, detain, and advise federal authorities when illegally-present foreign nationals have been arrested for criminal activity. The federal government, more specifically ICE, has an opportunity to utilize state and local law enforcement officers as a force multiplier in their efforts to secure our country. However, ICE must take a leadership role when dealing with the 287(g) program and provide more administrative oversight on how the program will operate. The need for clearer guidance from ICE in the areas of program goals, objectives, and outcomes, data collection, policy and procedures, administrative paperwork, audit/inspection process, and implementation and maintenance of the program is required. Additionally, ICE must develop, implement, and maintain an ongoing public awareness and community outreach program so that all stakeholders can be informed and involved at all stages of the program. Finally, ICE must develop a consistent and effective plan for dealing with the transportation and detention space necessary to house the criminal aliens once they have been identified and detained under the 287(g) authority.

The value of the 287(g) program is considerable. Although there remains much to do to improve its performance, the path forward appears necessary, useful, and clear. The following offers several recommendations to improve the program both in terms of its operational effectiveness and efficiency, and the recognition of its value among all residents of local communities.

## **B. RECOMMENDATIONS**

If the value of the 287(g) program is to be realized, and communities across the Nation are to come to embrace it, the Department of Homeland Security needs to aggressively pursue several improvements. The following eight recommendations provide ideas that emerge from the on-the-ground experiences of local law enforcement in three areas. These experiences, though, are shared across the country among those of us who work locally and regionally to combat crime and prevent terrorism.

- Expand a decentralized approach that the 287(g) program incorporates, compared to a centralized approach of utilizing only one agency, ICE, for the enforcement of immigration law throughout the nation. The federal government lacks the resources to deal with the problem of illegal immigration on its own and the Secretary of the Department of Homeland Security, Janet Napolitano, has advised that more boots on the ground are needed to combat the issue. The 287(g) program allows state and local agencies to be used by the nation as a force multiplier for interior enforcement.
- Mandatory review by all criminal detention facilities (local jails, state prisons, and federal prisons) of the immigration status of all subjects who have been arrested and detained prior to their release from prison or jail. This should be done at a minimal by the use of an LESC check. This should be routine and consistently applied nationwide, not selective or guided by local politics.
- Increase information sharing between the federal, state, and local agencies.
  - Increase intelligence sharing, analysis, and dissemination at all levels (federal, state and local). This is imperative for tracking trends and formulating proper strategies to combat illegal immigration. There is a federal database called ORION/LEADS, which maintains intelligence reports and other information for use in analysis of smuggling, fraud, and enforcement trends. This system or a similar centralized system should be used by all levels of enforcement. One of the main findings post-9/11 is the detrimental consequences when information is not shared among different levels of law enforcement. The fragmentation of national immigration databases is inefficient; consolidation to one database would increase accuracy and save time.

- ICE should develop and coordinate an annual national summit for all 287(g) participating agencies. It should be mandatory for participating agencies to send at least one representative. This yearly meeting would be used as a way of sharing intelligence, discussing trends, outcomes, problems, legal updates, procedure updates, and best practices.
- The development and implementation of a national 287(g) database that captures and tracks important statistical/demographic information on all 287(g) subjects. This database should be mandatory for all participating agencies and would improve data sharing among local, state, and federal agencies.
- Utilization of modern web 2.0 technology. This technology can be used to develop an interactive website that can be used by both the general public and participating 287(g) agencies. For example, training updates, legal updates, policy and procedure updates, and video training could be sent to members via the internet and signed off by the member so that proper tracking can be accounted for. Additionally, participating agencies could submit questions, via the site. If a mandatory database is established, it could forward all statistical data to the site so that all participating agencies would have real-time information immediately. The technology could be used for the general public also in areas such as a Q & A, educational component on what the 287(g) program is and how it is administered throughout the nation, as well as statistical information on subjects that have been detained and/or removed from the U.S.
- Mandatory educational training for all members of participating agencies could be done through written roll call or video roll call. This is important so all members of participating agencies have a clear understanding of what the program is and what authority the 287(g) cross-certified members have and do not have.
- Standardization
  - A standardized strategic approach for enforcement should be developed and implemented for the LEO/Task Force model. This consistency would provide basic efficiency for the program and would reduce liability. It would also provide a clearer understanding to the general public on how the program is administered throughout the nation.

- Develop and implement a mandatory one week field training program that can be used to train all 287(g) participants upon completion of the initial 287(g) training. The field training program should consist of standard duties that all agencies would perform, to include but not be limited to: accessing and searching immigration databases, interviewing techniques, creation and completion of alien-files, etc.
- All 287(g) cross-certified officers should have access to any and all Immigration databases that could assist them in identifying individuals and determining their immigration status in the United States. Some of the systems that would be beneficial are:
  - IBIS & TECS–The Interagency Border Inspection System and the Treasury Enforcement Communications System generally refer to the same computer system used by Customs, INS, and other agencies at ports of entry. It brings together information of common interest from various other systems, including information on wanted persons and suspect individuals. TECS is owned by the Customs service.
  - NAILS–The National Automated Immigrant Lookout System contains INS lookout records for use by law enforcement agencies on immigration-related cases with short narratives. NAILS records interface with IBIS and CLASS.
  - NIIS–The Non-Immigrant Information System tracks non-immigrants. All information from I-94 arrival and departure cards is entered in this computer system, so NIIS records should show the date and class of admission, destination information, and the dates of those who entered on visas. NIIS does not have entry or exit information on U.S. citizens, permanent residents, or Canadian citizens.
  - SEVIS–The Student and Exchange Visitor Information System tracks students and exchange visitors with F, J, or M status.
  - CCD–The Consular Consolidated Database is a set of databases in Washington, D.C., that hold and provide access to all current and archived data from Automated Biometric Identification System (ABIS),

ARCS, Automated Cash Register System (ACS), Consular Lookout and Support System (CLASS), Consular Shared Tables (CST), Datashare, Diversity Visa Information System (DVIS), Immigrant Visa Information System (IVIS), Immigrant Visa Overseas (IVO), Non-Immigrant Visa (NIV), Visa Opinion Information Service (VOIS), and Waiver Review System (WRS) applications. CCD also provides access to passport data in the Travel Document Information System (TDIS), Passport Lookout and Tracking System (PLOTS), and Passport Information Electronic Records System (PIERS).

- ADIS—Arrival Departure Information System—This system contains arrival and departure records for subjects coming and going from the United States.
- EDMS—Enterprise Document Management System allows for authorized users to view alien files that have been digitized and scanned into the EDMS system.
- ATS—Automated Targeting System tracks inbound and outbound flights and passenger information. However, the best solution would be the development of one immigration database that is utilized by all federal, state, and local agencies.
- A standardized ICE template for the ICE audit so that participating agencies would have a clear understanding of what the inspection process consists of and in what areas or set of standards they will be inspected. Additionally, the audit should be used as a program evaluation to address identified issues and to review measurable outcomes.
- A standardized checklist/template of items and/or steps that must be completed, reviewed, and signed off by ICE prior to operational deployment. A standardized checklist would ensure that everything is in place prior to the implementation of the program (i.e., computers are in place and operating, agency policies are in place, field training program has been completed, stakeholder meetings have been conducted, and so forth).
- A more standardized and formal format and supportive role from ICE when preparing the subject's A-files for approval. ICE needs to standardize how files need to be put together and what needs to be placed in the file to make sure that

there is consistency across the nation and that all 287(g) agencies are completing the files completely and accurately.

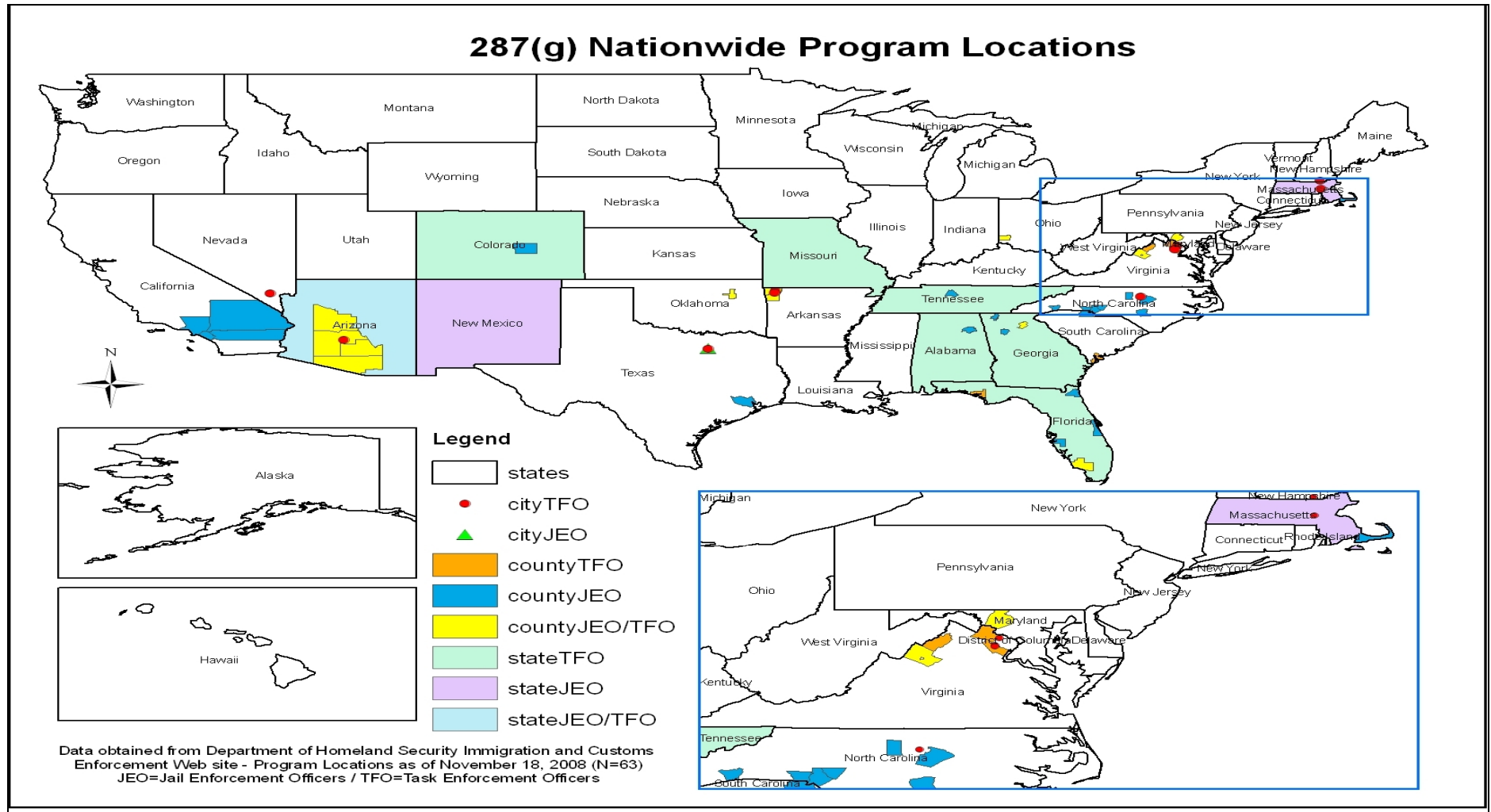
- Each program should have a full-time coordinator assigned in order to ensure that ICE is dealing with one specific person, thus providing consistent information sharing and creating a strong relationship with ICE. Additionally, this will provide a liaison for oversight of the program.
- Immediately appoint a national representative who will oversee the 287(g) program and coordinate with state and local agencies. This position is currently empty; however, the position is imperative, so that state and local efforts can be coordinated and represented in a consistent manner.
- Public awareness & community outreach
  - Create a standardized national education component for the general public & advocacy groups so the nation can have a clearer understanding of what the 287(g) program is and what it can do to assist states and local communities when confronted with illegal immigration. This can be done through public service announcements (PSA), literature, streaming video via the web, and an interactive website dedicated specifically to 287(g) program information.
  - Create a marketing campaign to recruit new agencies/communities to participate in the program. ICE could utilize the assistance of successful 287(g) program coordinators who are educated in the implementation process, how to administer the program at a state or local level properly, and what it takes to maintain the program.
  - ICE should take more of a leadership role and be more involved when dealing with community stakeholders during the implementation and operational stages of the 287(g) program. A protocol should be developed so that ICE and the participating communities can involve local stakeholders in the public awareness and community outreach area of the program. Also, a mandatory yearly community outreach/town hall meeting for communities that have the 287(g) program, so they can be advised of program outcomes.
- ICE needs to identify and certify more detention facilities throughout the country that can be used to hold detainees beyond 48 hours. By obtaining this certification, it would allow ICE more time to hold immigration detainees in local facilities until transportation could be arranged, upon the completion of their sentences.



### **C. FINAL REMARKS**

In reality, the federal government lacks the resources to deal with the problem of illegal immigration on its own. The homeland security concerns and public safety consequences of criminal aliens fall largely on the states and local jurisdictions. When illegally-present foreign nationals commit crimes and victimize citizens in a community or neighborhood, it is a local problem. When taxpayers in a community are paying to house criminal aliens in their local jails and state prisons, in addition to paying the costs associated with the illegal aliens' criminal cases—including costs for judges, victim services, etc.—it is a local problem. We learned hard lessons from 9/11—that the consequences of our law enforcement and government agencies working in isolation can be detrimental. Accepting the philosophical approach of 'more of the same,' when repeatedly proven to be ineffective, is dangerous. We need an effective approach to gain control of this problem. Some refer to the 287(g) program as a 'bailout' for the federal government; however, it is in reality a necessary partnership and prudent measure to keep our nation and our communities safe. Citizens demand their locally-appointed and elected law enforcement officials to uphold the oath they took to protect their safety. It is not an option for local officials to ignore the problem and place blame, particularly when there is a tool in place to remove from our communities those who pose a threat to homeland security and to public safety. The 287(g) program should be considered as part of the national policy for immigration enforcement.

## APPENDIX A.



Level	County	State	MOA Name	Type	Signed
state	Florida	FL	FL Department of Law Enforcement	TFO	7/2/2002
state	Alabama	AL	AL State Police	TFO	9/10/2003
county	Los Angeles	CA	Los Angeles County Sheriff's Office	JEO	2/1/2005
state	Arizona	AZ	AZ Department of Corrections	JEO	9/16/2005
county	San Bernardino	CA	San Bernardino County Sheriff's Office	JEO	10/19/2005
county	Mecklenburg	NC	Mecklenburg County Sheriff's Office	JEO	2/27/2006
county	Riverside	CA	Riverside County Sheriff's Office	JEO	4/28/2006
county	Orange	CA	Orange County Sheriff's Office	JEO	11/2/2006
county	Alamance	NC	Alamance County Sheriff's Office	JEO	1/10/2007
county	Maricopa	AZ	Maricopa County Sheriff's Office	JEO/TFO	2/7/2007
county	Cobb	GA	Cobb County Sheriff's Office	JEO	2/13/2007
county	Davidson	TN	Davidson County Sheriff's Office	JEO	2/21/2007
county	Gaston	NC	Gaston County Sheriff's Office	JEO	2/22/2007
city	Herndon	VA	Herndon Police Department	TFO	3/21/2007
state	Massachusetts	MA	MA Department of Corrections	JEO	3/26/2007
state	Colorado	CO	CO Department of Public Safety	TFO	3/29/2007
state	Arizona	AZ	AZ Department of Public Safety	TFO	4/15/2007
county	Rockingham	VA	Rockingham County Sheriff's Office	JEO/TFO	4/25/2007
city	Hudson	NH	Hudson City Police Department	TFO	5/5/2007
county	Shenandoah	VA	Shenandoah County Sheriff's Office	TFO	5/10/2007
county	El Paso	CO	El Paso County Sheriff's Office	JEO	5/17/2007
county	Prince William	VA	Prince William-Manassas Adult Detention Center	JEO	7/9/2007
state	Georgia	GA	GA Department of Public Safety	TFO	7/27/2007
county	Cabarrus	NC	Cabarrus County Sheriff's Office	JEO	8/2/2007
county	Collier	FL	Collier County Sheriff's Office	JEO/TFO	8/6/2007
county	Tulsa	OK	Tulsa County Sheriff's Office	JEO/TFO	8/6/2007
city	Framingham	MA	Framingham Police Department	TFO	8/14/2007
county	Barnstable	MA	Barnstable County Sheriff's Office	JEO	8/25/2007
state	New Mexico	NM	NM Department of Corrections	JEO	9/17/2007
city	Rogers	AR	Rogers Police Department	TFO	9/25/2007
county	Benton	AR	Benton County Sheriff's Office	JEO/TFO	9/26/2007
county	Washington	AR	Washington County Sheriff's Office AR	JEO/TFO	9/26/2007
city	Springdale	AR	City of Springdale Police Department	TFO	9/26/2007
county	York	SC	York County Sheriff's Office	JEO	10/16/2007
city	Durham	NC	Durham Police Department	TFO	2/1/2008
county	Whitfield	GA	Whitfield County Sheriff's Office	JEO	2/4/2008
county	Butler	OH	Butler County Sheriff's Office	JEO/TFO	2/5/2008
county	Frederick	MD	Frederick County Sheriff's Office	JEO/TFO	2/6/2008
county	Prince William	VA	Prince William County Police Department	TFO	2/26/2008
county	Prince William	VA	Prince William County Sheriff's Office	TFO	2/26/2008
county	Hall	GA	Hall County Sheriff's Office	JEO/TFO	2/29/2008
city	Manassas	VA	City of Manassas Police Department	TFO	3/5/2008
county	Pima	AZ	Pima County Sheriff's Office	JEO/TFO	3/10/2008
county	Pinal	AZ	Pinal County Sheriff's Office	JEO/TFO	3/10/2008
county	Yavapai	AZ	Yavapai County Sheriff's Office	JEO/TFO	3/10/2008
city	Phoenix	AZ	City of Phoenix Police Department	TFO	3/10/2008

Level	County	State	MOA Name	Type	Signed
city	Manassas Park	VA	Manassas Park Police Department	TFO	3/10/2008
county	Bay	FL	Bay County Sheriff's Office	TFO	6/15/2008
county	Cumberland	NC	Cumberland County Sheriff's Office	JEO	6/25/2008
county	Henderson	NC	Henderson County Sheriff's Office	JEO	6/25/2008
county	Wake	NC	Wake County Sheriff's Office	JEO	6/25/2008
county	Beaufort	SC	Beaufort County Sheriff's Office	TFO	6/25/2008
county	Loudoun	VA	Loudoun County Sheriff's Office	TFO	6/25/2008
state	Missouri	MO	MO State Highway Patrol	TFO	6/25/2008
state	Tennessee	TN	TN Department of Safety	TFO	6/25/2008
county	Etowah	AL	Etowah County Sheriff's Office	JEO	7/8/2008
county	Duval	FL	Jacksonville Sheriff's Office	JEO	7/8/2008
county	Manatee	FL	Manatee County Sheriff's Office	JEO	7/8/2008
city	Farmers Branch	TX	Farmers Branch Police Dept.	TFO	7/8/2008
county	Harris	TX	Harris County Sheriff's Office	JEO	7/20/2008
city	Carrollton	TX	Carrollton Police Department	JEO	8/12/2008
county	Brevard	FL	Brevard County Sheriff's Office	JEO	8/13/2008
city	Las Vegas	NV	Las Vegas Metropolitan Police Department	JEO	9/8/2008

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## APPENDIX B.

### TITLE VIII, 287(g) PROGRAM SURVEY

This survey has been developed in an effort to help us learn more about how 287(g) partnerships are implemented and utilized to fill the gap associated with enforcement of law at the local level and the enforcement of immigration law at the federal level. The survey addresses questions about your program's history, implementation, structure, operation, challenges, data collection, outcomes and impacts.

Please respond to all questions (do not leave any blank) and retain a copy of the completed survey for your records as a follow up call may be conducted to clarify responses. If you have any questions about the survey, please contact Chief Jim Bloom by calling 239.560.9636 or emailing [jimbloom@colliersheriff.net](mailto:jimbloom@colliersheriff.net). Please submit your responses and any attachments to: Operations Chief Jim Bloom, Collier County Sheriff's Office, 3301 Tamiami Trail East, Bldg. J, Naples, Florida 34112-4902 by November 28, 2008.

#### GENERAL AGENCY INFORMATION

How many full-time employees does your agency have? \_\_\_\_\_  
How many are sworn officers? \_\_\_\_\_  
What is the size of the population you serve? \_\_\_\_\_  
What is the size of your jurisdiction in square miles? \_\_\_\_\_  
How many part I crimes occurred in your jurisdiction in 2007? \_\_\_\_\_  
How many dispatched calls for service, including citizen and officer generated, did your agency handle in 2007? \_\_\_\_\_  
Type of 287(g) program in your Agency (check one):  
\_\_\_\_\_ Corrections/Jail  
\_\_\_\_\_ Law Enforcement  
\_\_\_\_\_ Concurrent Law Enforcement and Jail components

#### 287(g) HISTORY / TIMELINE - FROM INCEPTION TO IMPLEMENTATION TO CURRENT STATUS

Please provide month and year of the following events:

When did 287(g) program efforts first begin? \_\_\_\_\_  
When did your agency first discover the issue/concern of criminal aliens in your jurisdiction? \_\_\_\_\_  
When did you first learn about the 287(g) program/opportunity? \_\_\_\_\_  
When did you begin the process to receive 287(g) designation? \_\_\_\_\_  
When did you receive 287(g) official designation? \_\_\_\_\_  
When did your agency members complete 287(g) training? \_\_\_\_\_  
When did your program begin full operation? \_\_\_\_\_

Has your program received an ICE audit? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please give date: \_\_\_\_\_  
Is your program currently in full operation? Yes \_\_\_\_\_ No \_\_\_\_\_ If no, please give reason: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list any significant events related to your 287(g) program not mentioned in above timeline:

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#### REASONS / DRIVING FORCE BEHIND PROGRAM IMPLEMENTATION

Please indicate what factors contributed to your agency's need to implement the 287(g) program. Check all that apply and on a scale from one to five, with five having the strongest impact, please indicate how much this issue impacted your decision to implement the 287(g) partnership.

<input type="checkbox"/> Terrorism	1	2	3	4	5
<input type="checkbox"/> Jail population	1	2	3	4	5
<input type="checkbox"/> Community safety	1	2	3	4	5
<input type="checkbox"/> Community fear of crime	1	2	3	4	5
<input type="checkbox"/> Increase in gang-related crime	1	2	3	4	5
<input type="checkbox"/> Increase in violent crime	1	2	3	4	5
<input type="checkbox"/> Increase in identity theft crimes	1	2	3	4	5
<input type="checkbox"/> Increase in all crime levels	1	2	3	4	5
<input type="checkbox"/> Other - please list:	1	2	3	4	5
<input type="checkbox"/>	1	2	3	4	5
<input type="checkbox"/>	1	2	3	4	5
<input type="checkbox"/>	1	2	3	4	5
<input type="checkbox"/>	1	2	3	4	5

#### CHALLENGES OF IMPLEMENTING AND MAINTAINING THE PROGRAM

Implementing a new program, particularly in law enforcement, often creates challenges, obstacles and lessons learned along the way. In this section, I would like to learn about the challenges your agency has faced implementing the 287(g) program, and whether such challenges were resolved or continue to be ongoing issues faced by your agency.

##### Internal Agency Challenges

Please check all that apply, and describe the challenge faced.

☐ Writing internal policy \_\_\_\_\_  
Has this been resolved? ☐ Yes ☐ No ☐ Ongoing issue

☐ Implementing internal policy \_\_\_\_\_  
Has this been resolved? ☐ Yes ☐ No ☐ Ongoing issue

☐ Training and clarity on ICE issues \_\_\_\_\_  
Has this been resolved? ☐ Yes ☐ No ☐ Ongoing issue

\_\_\_\_ Training on legal authority \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Paperwork logistics \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Data entry/database development \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

Outside Agency Challenges

Please check all that apply, and give brief description of the challenge faced.

\_\_\_\_ Educational concerns \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Community concerns \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Jail housing Issues \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Legal challenges \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ ICE challenges \_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_  
Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue



Other \_\_\_\_\_

Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

Other \_\_\_\_\_

Has this been resolved? \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_ Ongoing issue

#### COMMUNITY STAKEHOLDERS AND AGENCY OUTREACH

Law enforcement programs, particularly the 287(g) partnership, often involve community stakeholders, such as citizens, community groups and businesses. Please check all that apply regarding your 287(g) program. On a scale of one to five, with five having the strongest involvement, please indicate the level of involvement for each.

____ Minority groups	1	2	3	4	5
____ Civic groups	1	2	3	4	5
____ Faith-based groups	1	2	3	4	5
____ Other citizens groups	1	2	3	4	5
____ Non-profit agencies	1	2	3	4	5
____ Media	1	2	3	4	5
____ Local businesses	1	2	3	4	5
____ Other law enforcement agencies	1	2	3	4	5
____ Other - Please list:	1	2	3	4	5
_____	1	2	3	4	5
_____	1	2	3	4	5
_____	1	2	3	4	5
_____	1	2	3	4	5

Has your agency been involved in community outreach and education? Yes \_\_\_\_ No \_\_\_\_

If yes, please describe the type and frequency of outreach efforts and attach any brochures or outreach materials your agency has distributed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### ORGANIZATIONAL STRUCTURE OF THE PROGRAM

How many officers/deputies have been 287(g) certified and trained? \_\_\_\_\_

How many officers/deputies are currently operating under 287(g) authorization? \_\_\_\_\_

Please identify the role(s) of each 287(g) certified and trained member working in a 287(g) capacity:

Member's Rank and Title	Role in 287(g) program	Agency Dept/Bureau

Please indicate whether your agency used new and/or existing positions used to staff your 287(g) program, and the number of position for each category:

\_\_\_\_\_ new positions: number \_\_\_\_\_  
 \_\_\_\_\_ existing positions: number \_\_\_\_\_

If any existing positions were used, please describe the impact on other responsibilities of your agency, such as any effect on officer/deputy work: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<b>IMPLEMENTATION AND OPERATING COSTS</b>
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To date, what has been the total monetary cost to train certified 287(g) agency members? \$ \_\_\_\_\_

To date, what has been the total cost for necessary items, such as equipment and technologies, needed to implement this program? \$ \_\_\_\_\_

Have there been other costs associated with implementing your 287(g) program? Yes \_\_\_\_\_ No \_\_\_\_\_  
 If yes, please describe and provide amount: \_\_\_\_\_

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Cost: \$ \_\_\_\_\_

Has this program shifted funding from other positions? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe: \_\_\_\_\_

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Have other agency responsibilities been shifted to implement the 287(g) program? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe: \_\_\_\_\_

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<b>PROGRAM MISSION, STRATEGY AND OPERATION</b>
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Does your 287(g) program have a mission statement? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide: \_\_\_\_\_

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Do you have a written strategy identifying program concepts / goals / focus of your 287(g) program?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please provide a copy.

Does your 287(g) program operate with particular focus and/or priority? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please check all that apply and on a scale of one to five, with five being the highest priority, please indicate how much priority is given to that particular area.

_____ Warrants	1	2	3	4	5
_____ Homeland Security					
_____ Organized Crime	1	2	3	4	5

_____ Human Trafficking	1	2	3	4	5
_____ Gang Enforcement	1	2	3	4	5
_____ Violent Criminals	1	2	3	4	5
_____ Career Criminals	1	2	3	4	5
_____ Sexual Offenders/Predators	1	2	3	4	5
_____ Other - Please list:	1	2	3	4	5
_____	1	2	3	4	5
_____	1	2	3	4	5
_____	1	2	3	4	5
_____	1	2	3	4	5

Does your agency have an operations manual outlining 287(g) program components? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe the information/sections included: \_\_\_\_\_

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Has the 287(g) partnership/program changed overall operations for your Agency? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please explain:

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Please attach a copy of your Memorandum of Agreement with ICE.

<b>DATA COLLECTION AND MEASUREMENT</b>
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Is your agency collecting and maintaining data on individuals processed through your 287(g) program?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please check all that apply (please include only if this item is being collected  
on a routine basis).

**Demographic Information**

\_\_\_\_\_ Name  
 \_\_\_\_\_ Aliases  
 \_\_\_\_\_ Physical description  
 \_\_\_\_\_ Current address  
 \_\_\_\_\_ Last known address  
 \_\_\_\_\_ Occupation  
 \_\_\_\_\_ Employer information  
 \_\_\_\_\_ Names of associates and relatives

**Criminal History Information**

\_\_\_\_\_ Number of prior arrests  
 \_\_\_\_\_ Locations of prior arrests  
 \_\_\_\_\_ Disposition of prior arrests  
 \_\_\_\_\_ Type of offenses  
 \_\_\_\_\_ Level of offenses

**Law Enforcement Identification**

\_\_\_\_\_ Local number

\_\_\_\_ State number  
\_\_\_\_ FBI number

Other – please list:

[illegible]

\_\_\_\_\_ Inmates interviewed to determine 287(g) status  
 \_\_\_\_\_ Number of illegally-present jail intakes

What data collection and/or data measurement challenges have you faced? \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

## LESSONS LEARNED AND BEST PRACTICES

[illegible]

Please provide information on best practices in your agency regarding implementing and maintaining your 287(g) program:

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<b>OUTCOMES AND PROGRAM IMPACTS</b>
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How many illegally-present foreign nationals have you detained through this 287(g) authority? \_\_\_\_\_  
How many illegally-present foreign nations have been removed due to your 287(g) program? \_\_\_\_\_

Please describe benefits received from this partnership/program: \_\_\_\_\_

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Please describe any negative impacts as a result of this program/partnership: \_\_\_\_\_

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## DISCUSSION POINTS NOT ADDRESSED WITH THE ABOVE QUESTIONS

Please discuss any 287(g) issues not covered in above sections: \_\_\_\_\_

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**Thank you for taking the time to participate in this survey!**

Please direct any questions or comments to Chief Jim Bloom, Collier County Sheriff's Office  
239.530.9636 or [jimbloom@colliersheriff.net](mailto:jimbloom@colliersheriff.net)

## **APPENDIX C.**

### **MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (MOA) constitutes an agreement between United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the Collier County Sheriff's Office (CCSO), pursuant to which ICE authorizes up to a maximum of 32 nominated, trained, and certified personnel of the Collier County Sheriff's Office (hereinafter interchangeably referred to as CCSO or the "Law Enforcement Agency" [LEA]), to perform certain immigration enforcement functions as specified herein. The CCSO represents Collier County in the implementation and administration of this MOA. It is the intent of the parties that these delegated authorities will enable the LEA to identify and process immigration violators in Collier County consistent with the terms of this MOA. The ICE and LEA points of contact for purposes of this MOA are identified in Appendix A.

#### **I. PURPOSE**

The purpose of this MOA is to set forth the terms and conditions pursuant to which selected LEA personnel (participating LEA personnel) will be nominated, trained, and thereafter perform certain functions of an immigration officer within the LEA. This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating LEA personnel to perform. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating LEA personnel as members of the LEA. However, the exercise of the immigration enforcement authority granted under this MOA to participating LEA personnel shall occur only as provided in this MOA. This MOA also describes the complaint procedures available to members of the public regarding immigration enforcement actions taken by participating LEA personnel pursuant to this agreement.

#### **II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act (INA), also codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOA constitutes such a written agreement.

#### **III. POLICY**

This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating CCSO personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating CCSO personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA. For the purposes of this MOA, ICE officers will provide supervision for participating CCSO personnel only as to immigration enforcement functions. CCSO retains supervision of all other aspects of the employment and performance of duties of participating CCSO personnel.



#### IV. ASSIGNMENTS

Before participating LEA personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete mandatory 5 week (4 week for LEA personnel functioning solely in a correctional facility or ICE detention facility) training in the enforcement of federal immigration laws and policies as provided by ICE instructors and thereafter pass examinations equivalent to those given to ICE officers. Only participating LEA personnel who are selected, trained, authorized, and supervised, as set out herein, have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

Participating LEA personnel performing immigration-related duties pursuant to this MOA will be LEA officers assigned to the Collier County Jail, the Driver's License Office Enforcement Bureau, Fugitive Warrants Bureau, Marine Bureau, Criminal Investigations Division (CID), Street Gang Enforcement Bureau, Vice and Narcotics Bureau and Strategic Enforcement Team (SET). Participating LEA personnel will be exercising their immigration-related authorities during the course of criminal investigations involving aliens encountered within Collier County. Any combination of these officers or others may be assigned and/or co-located as task force officers to assist ICE agents with criminal investigations.

The mission of these various LEA assignments are summarized as follows:

Collier County Jail: Booking and/or Classification officers assigned to the County Jail.

Fugitive Warrants Bureau: The LEA personnel assigned to the Warrants Bureau are charged with the responsibility of identifying high-risk felons who are wanted for crimes or offenses that represent a significant threat to public safety.

Vice and Narcotics Bureau: The LEA personnel assigned to these various drug enforcement units are involved with illegal trafficking in narcotics investigations and gang investigations.

Street Gang Unit: The LEA personnel assigned to the anti-gang unit engage in law enforcement actions that are targeted against gang activity.

Criminal Investigation Division (CID): The LEA personnel assigned to CID are charged with the responsibility of identifying enterprises and other forms of criminal activity.

Strategic Enforcement Teams (SET): The LEA personnel assigned to SET are officers who have been assigned to the Patrol Division and charged with the responsibility of assisting the agency and surrounding local authority on gathering criminal intelligence and developing strategies for arresting and successfully prosecuting subjects involved in criminal activity throughout Collier County.

Driver's License Office Enforcement: The LEA personnel assigned to the Driver's License Office Enforcement Bureau are tasked with investigating identity theft and the use of fraudulent documents to obtain Florida Drivers License or Identification cards.

Marine Unit: The LEA personnel assigned to this unit are responsible for maintaining the security of the 88 nautical miles of shoreline and open ocean as a result of the vulnerability of our community through water access. This unit is also responsible for the coordination and operational assistance during a mass migration incident that may occur within our counties jurisdiction.

## V. DESIGNATION OF AUTHORIZED FUNCTIONS

For the purposes of this MOA, participating LEA personnel will be authorized to perform the following functions pursuant to the stated authorities, subject to the limitations contained in this MOA:

- The power and authority to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1)) and to process for immigration violations those individuals who are convicted of State or Federal felony offenses;
- The power to arrest without warrant any alien entering or attempting to unlawfully enter the United States, or any alien in the United States, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA § 287(a)(2) and 8 C.F.R. 287.5(c)(1).
- The power to arrest without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens. INA § 287(a)(4) and 8 C.F.R. § 287(c)(2). Notification off such arrest must be made to ICE within twenty-four (24) hours;
- The power to serve warrants of arrest for immigration violations under 8 C.F.R. § 287.5(e)(3).
- The power and authority to administer oaths and to take and consider evidence (INA § 287(b) and 8 C.F.R. § 287.5(a)(2)) to complete required criminal alien processing, to include fingerprinting, photographing, and interviewing, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;

- The power and authority to prepare charging documents (INA Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R. 238.1; INA Section 241(a)(5), 8 C.F.R. 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3) including the preparation of the Notice to Appear (NTA) application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors;
- The power and authority to issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors; and
- The power and authority to detain and transport (8 C.F.R. § 287.5(c)(6)) arrested aliens to ICE-approved detention facilities.

## VI. DETENTION ISSUES

The LEA is expected to pursue to completion prosecution of the state or local charges that caused the individual to be taken into custody. ICE will assume custody of individuals who have been convicted of a State or local offense only after such individuals have concluded service of any sentence of incarceration. ICE will also assume custody of aliens with prior criminal convictions and when immigration detention is required by statute. The ICE Detention and Removal Field Office Director or designee will assess on a case-by-case basis the appropriate removal vehicle to be employed and/or whether to assume custody of individuals that do not meet the above criteria based on special interests or other extenuating circumstances after processing by the LEA. The immigration laws provide ICE Detention and Removal Operations (DRO) with the discretion to manage limited DHS detention resources, and ICE Field Office Directors may exercise this discretion by declining to detain aliens whose detention is not mandated by federal statute.

If ICE determines that it is necessary, the LEA will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which, the LEA will provide, for a reimbursable fee, detention of incarcerated aliens in LEA facilities, upon the completion of their sentences. The LEA facility will be expected to meet the ICE detention standards for either a less than 72-hour or over 72-hour facility as determined by ICE, and consistent with the anticipated detention period.

The parties understand that the LEA will not continue to detain an alien after that alien is eligible for release from the LEA's custody in accordance with applicable law and LEA policy, except for a period of up to 48-hours, excluding Saturday, Sunday, and any holiday, pursuant to an ICE detainer issued in accordance with 8 C.F.R. § 287.7, absent an IGSA in place as described above.

Upon completion of processing and release from the LEA's affiliated detention facilities of an individual who participating LEA personnel have determined to be a removable alien, the alien will be transported by the LEA on the same day to an ICE designated office or facility, after notification to and coordination with the ICE supervisory officer, so that no further detention costs will be incurred by ICE.

## VII. NOMINATION OF PERSONNEL

The Collier County Sheriff's Office will nominate candidates for initial training and certification under this MOA. For each candidate, ICE may request any information necessary for a background check and to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. All candidates must be United States citizens. All candidates must have at least two years of LEA work experience. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances.

Should a candidate not be approved, a substitute candidate may be submitted if time permits such substitution to occur without delaying the start of training. Any future expansion in the number of participating LEA personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOA.

## VIII. TRAINING OF PERSONNEL

ICE will provide participating LEA personnel with the mandatory 4 and 5 week training tailored to the immigration functions to be performed.

Training will include, among other things: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) Civil Rights laws; (vi) the U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating LEA personnel are trained and certified, ICE may provide additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration officer functions, unless either party terminates this MOA pursuant to Section XX below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or a designated team leader.

## IX. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC the names of those LEA personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC will provide the participating LEA personnel with a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to the LEA. The ICE supervisory officer, or designated team leader, will evaluate the activities of all personnel certified under this MOA.

Authorization of participating LEA personnel to act pursuant to this MOA may be revoked at any time by ICE or the LEA. Such revocation will require immediate notification to the other party to this MOA. The Collier County Sheriff and the ICE Special Agent in Charge and ICE Field Office Director in Washington, DC will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA, pursuant to Section XX below, shall constitute revocation of all immigration enforcement authorizations delegated hereunder.

#### X. COSTS AND EXPENDITURES

Participating LEA personnel will carry out designated functions at the LEA's expense, including salaries and benefits, local transportation, and official issue material.

ICE will provide the instructors and training materials. The LEA is responsible for the salaries and benefits, including overtime, for all of its personnel being trained or performing duties under this MOA, and for those personnel performing the regular functions of the participating LEA personnel while they are receiving training. The LEA will cover the costs of all LEA candidates' travel, housing, and per diem affiliated with the training required for participation in this agreement. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines that it is necessary, the LEA will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which the LEA will provide, for a reimbursable fee, transportation for all incarcerated aliens in the LEA's facilities, upon the completion of their sentences, or upon completion of processing in those circumstances in which state or local prosecution is not available, to a facility or location designated by ICE. If ICE determines that it is necessary, the LEA will provide ICE, at no cost, with an office within each participating LEA facility for ICE supervisory employees to work.

ICE agrees to be responsible for the purchase, installation, and maintenance of technology (computer/IAFIS/Photo and similar hardware/software) necessary to support the investigative functions of participating LEA personnel at each LEA facility with an active 287(g) program. The use of this equipment is to be limited to the performance of responsibilities authorized by this MOA under section 287(g) of the INA by participating LEA personnel. ICE also agrees to provide the necessary technological support and software updates for use by participating LEA personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased or provided by ICE, shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, or when deemed necessary by the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC.

#### XI. ICE SUPERVISION

Immigration enforcement activities conducted by the participating LEA personnel will be supervised and directed by ICE supervisory officers or the designated team leader in Washington, DC. Participating LEA personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer. Participating LEA personnel shall give timely notice to the ICE supervisory officer within 24 hours of any detainer issued under the authorities set forth in this MOA.

In the correction setting, participating CCSO personnel shall give notice to the ICE supervisory officer as soon as practicable after, and in all cases within 24 hours of, any detainer issued under the authorities set forth in this MOA. In the field setting, participating CCSO deputies will contact an ICE duty officer at the time of exercising the authority in this MOA for guidance. The actions of participating CCSO personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance.

For purposes of this MOA, ICE officers will provide supervision of participating LEA personnel only as to immigration enforcement functions. The LEA retains supervision of all other aspects of the employment of and performance of duties by participating LEA personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LEA personnel in exercising these authorities shall be DHS and ICE policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating LEA personnel will be expected or required to violate or otherwise fail to maintain the LEA's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.

If a conflict arises between an order or direction of an ICE supervisory officer and LEA rules, standards, or policies, the conflict shall be promptly reported to the ICE Special Agent in Charge and ICE Field Office Director in Washington, DC, or designees, and the Collier County Sheriff's Office, or designee, when circumstances safely allow the concern to be raised. The Special Agent in Charge, the ICE Field Office Director in Washington, DC, and the Sheriff of Collier County shall attempt to resolve the conflict.

Whenever possible, CCSO will deconflict all addresses, telephone numbers, and known or suspected identities of violators of the INA with ICE's Office of Investigations (OI) or ICE's Office of Detention and Removal (DRO) prior to taking any enforcement action. This deconfliction will, at a minimum, include wants/warrants, criminal history, and a person, address, and vehicle check through TECS II.

CCSO participating personnel authorized pursuant to this MOA may be assigned and/or co-located with ICE as task force officers to assist ICE agents with criminal investigations.

## XII. REPORTING REQUIREMENTS

The LEA will be responsible for tracking and maintaining accurate data and statistical information for their 287(g) program, including any specific tracking data requested by ICE. Upon ICE's request, such data and information shall be provided to ICE for comparison and verification with ICE's own data and statistical information, as well as for ICE's statistical reporting requirements and to assess the progress and success of the LEA's 287(g) program.

## XIII. LIABILITY AND RESPONSIBILITY

If any participating LEA personnel are the subjects of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation or civil lawsuit, the LEA shall, to the extent allowed by state law, immediately notify ICE of the existence and nature of the complaint. The resolution of the complaint shall also be promptly reported to ICE. Complaints regarding the exercise of immigration enforcement authority by participating LEA personnel shall be handled as described below.

Except as otherwise noted in this MOA or allowed by federal law, the LEA will be responsible and bear the costs of participating LEA personnel with regard to their property or personnel expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating LEA personnel will only be treated as federal employees for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function as authorized by this MOA. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOA that participating LEA personnel will enjoy the same defenses and immunities available to ICE officers from personal liability arising from tort lawsuits based on actions conducted in compliance with this MOA. 8 U.S.C. § 1357(g)(8).

Participating LEA personnel named as defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and will be handled in coordination with the ICE Special Agent in Charge and/or the ICE Field Office Director in Washington, DC. Requests for representation must be presented to the ICE Office of the Chief Counsel at 901 North Stuart Street, Suite 1307, Arlington, Virginia 22203. Any request for representation and related correspondence must be clearly marked "Subject to Attorney-Client Privilege." The Office of the Chief Counsel will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit, to the ICE Office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and an advisory statement opining whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff, Civil Division, Department of Justice. ICE will not be liable for defending or indemnifying acts of intentional misconduct on the part of participating LEA personnel.

The LEA agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers. It is understood that information provided by any LEA personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with Garrity v. New Jersey, 385 U.S. 493 (1967).

As the activities of participating LEA personnel under this MOA are undertaken under federal authority, the participating LEA personnel will comply with federal standards and guidelines relating to the Supreme Court's decision in Giglio v. United States, 405 U.S. 150 (1972), and its progeny, which relates to the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

#### XIV. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating LEA personnel, with regard to activities undertaken under the authority of this MOA, is included at Appendix B.

#### XV. CIVIL RIGHTS STANDARDS

Participating LEA personnel who perform certain federal immigration enforcement functions are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating LEA personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the LEA as needed.



## XVI. STEERING COMMITTEE

The ICE Special Agent in Charge, the ICE Field Office Director, and the Sheriff of Collier County shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities conducted by the participating LEA personnel and to ensure compliance with the terms of this MOA. The steering committee will meet periodically in Collier County at locations to be agreed upon by the parties, or via teleconference. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Collier County. An initial review meeting will be held no later than nine months after certification of the initial class of participating LEA personnel under Section IX, above.

## XVII. COMMUNITY OUTREACH

The LEA may, at its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOA. ICE may participate in such outreach upon the LEA's request.

## XVIII. RELATIONS WITH THE NEWS MEDIA

LEA may, at its discretion, communicate the substance of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOA. This MOA also describes the complaint procedures available to members of the public regarding actions taken by participating LEA personnel pursuant to this agreement.

The LEA hereby agrees to coordinate with ICE before releasing information to the media regarding actions taken under this MOA. The points of contact for ICE and CCSO for this purpose are identified in Appendix C.

## XIX. MODIFICATION OF THIS MOA

Modifications to this MOA must be proposed in writing and approved by the signatories.

XX. DURATION AND TERMINATION OF THIS MOA

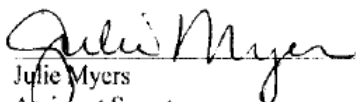
This MOA will be in effect from the date of signing until it is terminated by either party. Either party, upon written notice to the other party, may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect immediately upon receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the Sheriff of Collier County. Notice of termination or suspension by CCSO shall be given to the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC.

Except for the provisions contained in Section XIII, this MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

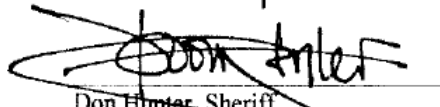
By signing this MOA, each party represents it is fully authorized to enter into this MOA, and accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

Date: 8/6/07



Julie Myers  
Assistant Secretary  
Immigration and Customs Enforcement  
Office of Homeland Security

Date: 29 MAY 07



Don Hunter, Sheriff  
Collier County Sheriff's Office  
3301 Tamiami Trail E. Bldg. J  
Naples, FL 34104-4902

## **POINTS OF CONTACT**

The ICE and CCSO points of contact for purposes of implementation of this MOA are:

For CCSO:	Don Hunter, Sheriff of Collier County Collier County Sheriff's Office 3301 Tamiami Trail E. Bldg. J Naples, FL 34112-4902 (239) 774-4434
For ICE DRO:	Mary F. Loiselle Field Office Director Office of Detention and Removal 2675 Prosperity Avenue Fairfax, VA 22031 (703) 285-6220
For ICE OI:	Robert Weber Special Agent in Charge 2203 North Lois Avenue, Suite 300 Tampa, FL 33607 (813) 357-7000

## **APPENDIX B**

### **COMPLAINT PROCEDURE**

This MOA is an agreement between DHS/ICE and the Collier County Sheriff's Office, hereinafter referred to as the "Law Enforcement Agency" (LEA), in which selected LEA personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating LEA personnel pursuant to the MOA, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

The MOA sets forth the process for designation, training, and certification of certain LEA personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the LEA and be handled in accordance with the LEA Manual of Policy and Procedures. The LEA will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOA. The number and type of the latter complaints will be monitored by the Steering Committee established under Section XVI of the MOA.

In order to simplify the process for the public, complaints against participating LEA personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the LEA's Internal Affairs Division will coordinate complaint receipt and investigation.

The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRD). The ICE OPR will coordinate complaints related to participating personnel with the LEA Internal Affairs Division as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRD, this will not preclude the DHS OIG, DOJ CRD, or ICE OPR from conducting the investigation in coordination with the LEA's Internal Affairs Division, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the LEA's Internal Affairs Division will follow applicable LEA policies and procedures, personnel rules, Arizona statutes, and collective bargaining agreement requirements.

## 1. Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated as appropriate by the LEA within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

Complaints will be accepted from any source (e.g.: ICE, LEA, participating LEA personnel, inmates, and the public).

Complaints can be reported to federal authorities as follows:

- A. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253; or
- B. Telephonically to the Resident Agent in Charge of the ICE OPR office in Tampa, FL; or
- C. Via mail as follows:

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I Street, NW  
Room 3260  
Washington, D.C. 20536

Complaints can also be referred to and accepted by any of the following LEA entities:

- A. The LEA Internal Affairs Division; or
- B. The supervisor of any participating LEA personnel; or

LEA's Administrative Unit as follows;  
Major Jim Bloom  
Collier County Sheriff's Office  
3301 East Tamiami Trail, Bldg. J  
Naples, FL 34112-4902

- C. The LEA Internal Affairs Division as follows:  
Jim Williams, Chief of Investigations  
3301 Tamiami Trail E. Bldg. J  
Naples, FL 34112-4902  
(239) 774-4434

## 2. Review of Complaints

All complaints (written or oral) reported to the LEA directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA with the assistance of the ICE Special Agent in Charge and the ICE Field Office Director in Washington, DC. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

In all instances, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to the ICE OPR will be shared with the LEA's Internal Affairs Division when the complaint involves LEA personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

## 3. Complaint Resolution Procedures

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

### A. Referral of Complaints to LEA Administrative Investigations Unit.

The ICE OPR will refer complaints, as appropriate, involving LEA personnel to the LEA's Administrative Investigations Unit for resolution. The Major Jim Bloom will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

### B. Interim Action Pending Complaint Resolution

- Whenever any participating LEA personnel are under investigation and subject to interrogation by the LEA for any reason that could lead to disciplinary action, demotion, or dismissal, the policy requirements of the Collier County Sheriff's Office shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOA pending resolution of an inquiry.

### C. Time Parameters for Resolution of Complaints

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

**D. Notification of Resolution of a Complaint**

ICE OPR will coordinate with the LEA's Administrative Unit to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

## **APPENDIX C**

### **PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XVIII of this MOA, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For CCSO:

Jim Bloom, Chief of Operations  
Sheriff of Collier County  
Collier County Sheriff's Office  
3301 Tamiami Trail E. Bldg. J  
Naples, FL 34112-4902  
(239) 530-9636

Chris Freeman, Captain of Corrections  
Sheriff of Collier County  
Collier County Sheriff's Office  
3301 Tamiami Trail E. Bldg. J  
Naples, FL 34112-4902  
(239) 793-9352

For ICE:

Public Information Officer  
Barbara Gonzalez  
Office of Public Affairs and Internal Communication  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
8075 N.W. 53<sup>rd</sup> Street  
Miami, FL 33166  
(305) 970-1294



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**APPENDIX D.**

**Collier County Sheriff's Office**

**Criminal Alien Task Force  
(IMPLEMENTATION and ENFORCEMENT STRATEGY)**

**Sheriff Don Hunter**

## **Introduction**

The Collier County Sheriff's Office (CCSO) has entered into a Memorandum of Agreement (MOA) with the United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS). The agreement will allow selected members of the CCSO, after receiving ICE training and certification, to perform certain immigration enforcement functions as specified in the MOA. Implementation of the MOA will provide the CCSO with the authority to address, in conjunction with ICE, issues involving criminal aliens in Collier County. This partnership is designed to take advantage of the local knowledge possessed by members of the Collier County Sheriff's Office and the Federal authority inherent in the current Immigration and Nationality Act.

In order to activate the MOA the CCSO designated members from various disciplines throughout the agency to receive the ICE training, certification and security clearances. Those members designated for this special enforcement and administrative partnership perform duties in corrections, investigations, tactical enforcement, intelligence, street gang operations and homeland security. This memorandum sets forth the CCSO strategy for implementation and utilization of the enforcement authority granted to its trained members, as well as, the supporting responsibilities of other members of the CCSO.

### **CCSO Criminal Alien Task Force Strategy**

The members of the CCSO who have received training and have been granted certification and clearances by ICE will be designated as the CCSO Criminal Alien Task Force (CATF) and will function under the authority and direction provided by the MOA. The CCSO has adopted the strategies outlined in this memorandum to permit operational flexibility and provide a consistent flow of directives, information and casework between the CCSO and ICE.

The Sheriff will select both a Corrections Coordinator and a Law Enforcement (LE) Coordinator. These Coordinators will function as liaisons with their respective ICE counterparts and will be responsible for implementing and

overseeing the responsibilities of the CCSO and its Task Force members as outlined in the MOA and this strategic plan. The Coordinators will report directly to their designated Chief for direction and guidance in fulfilling their duties and responsibilities. Clear communication and understanding of the CCSO criminal alien strategy throughout the agency will enable us to accomplish our objectives.

Members of the Corrections Element of the CATF will work together with Booking and Jail personnel to identify aliens that are newly arrested or already incarcerated and process them for removal.

With the exception of any members temporarily assigned to the CATF full-time, members of the Law Enforcement Element of the CATF will retain their current assignments within their respective Departments (Operations or Investigations) while taking on the additional responsibilities of their task force position. While performing CATF functions; however, members will operate under the direction of the Law Enforcement Coordinator and the Chief of Operations.

The CCSO strategy for implementation of the MOA and the CATF consists of two basic strategic elements...Corrections and Law Enforcement. Each element will have its own objectives and implementation plan.

### **Corrections**

The Corrections strategy consists of four collective phases and is supervised by the Captain of Corrections. There are currently ten members assigned to the Corrections Task Force, two Sergeants, and eight Corporals. In the first phase, the Corrections Task Force members will initiate contact with all newly arrested and/or already detained inmates at either of the two Collier County Jail locations. Each individual that is processed through the jail facilities is asked about their legal status within the United States. Fingerprint as well as personal identification information will be used to search the ICE Identification System, FCIC/NCIC, D.A.V.I.D, and local records management systems. Furthermore, a Corrections Task Force member will conduct an interview with any suspected illegal alien to determine if a detain order is needed.

Subjects identified by Corrections Task Force as detainable will enter phase two of the detention and removal process. Corrections Task Force will create a deportation file during this phase. The file will consist of (at a minimum); arrest report(s), criminal history, detain order and fingerprints. Completed files will then be transferred to the local Immigration and Custom Enforcement agents.

Corrections Task Force members as well as the local Immigration and Customs Enforcement Agents will work cooperatively on phase three. Illegal aliens identified for removal from the United States must have a detention and removal hearing before a Federal Immigration Judge. Upon final order of a Federal Immigration Judge, hold for deportation orders are processed (phase four). Deportation orders are held until such time that the subject has completed all sentences issued by County or Circuit Judges.

### **Law Enforcement**

The Law Enforcement strategy consists of three cumulative phases. In each phase, candidates for removal are identified and processed as appropriate. In the first phase, Task Force (TF) members will concentrate on identifying for removal proceedings violent criminal aliens including but not limited to, gang members, violent felony offenders, career criminals and sexual predators/offenders. The second phase will concentrate on identifying for removal proceedings other felony criminal aliens to include those charged with identity theft, narcotics related charges and fraud. The third phase will concentrate on community education; particularly, assisting local employers in assuring that they are hiring only those workers authorized to work in the United States. Upon full implementation all three phases will be operational and functioning concurrently.

The Task Force Coordinator will be responsible for the implementation of this strategy and prioritizing the investigations of the individual violators.

## **Task Force Coordinator**

The TF Coordinator will be tasked with implementation of the MOA and this plan as they pertain to law enforcement duties and responsibilities.

### **Phase I**

The purpose of Phase I is to identify, research, prepare appropriate removal paperwork, receive approval and apprehend violent criminal aliens who represent the greatest threat to the residents of Collier County. These violators have committed violent crimes and may be in the category of documented gang members, convicted sexual predators/offenders, organized crime affiliates, career criminals, etc. Each TF member is responsible for identifying the Violent Criminal Aliens in that TF member's area of operations.

Initially, selected members of the Law Enforcement Element of the CATF will be assigned for approximately one to two months to the TF office to assist the TF Coordinator in Phase I of this strategy. Subsequently, remaining TF members will be assigned, in a staggered pattern, to assist the TF Coordinator and continue the research and investigations already underway. At the conclusion of the initial two month cycle the Command Staff, TF Coordinator, ICE CAP/DRO Coordinator, and the ICE Coordinator will assess the efficiency and effectiveness of the two month operation and assign selected CATF members to work full-time conducting CATF investigations.

### **Administrative Procedures**

As the TF member identifies a violent criminal alien ("subject"), the TF member will complete an Offense Incident Report (OIR). To accomplish this a new incident type will be placed in DORs as "CATF Investigation" documenting, in the narrative, the nature of the original contact, evidence of alienage, deportability/inadmissibility, and proposed administrative /criminal charges. The purpose of the OIR is to document the biographical information of the subject along with the evidence of his/her illegal status. Upon completion, each TF member will send a hard copy of each OIR (and any accompanying documents

such as FI forms) to the TF Coordinator. The TF members will only document the articulable facts indicating the candidate is in the U.S. illegally and facing likely federal immigration charges... ***TF member will not make an arrest at this point.***

When the TF Coordinator receives the OI report and supporting documentation, the Coordinator or a full-time CATF member, will create a candidate “packet” and request NCIC/FCIC, DAVID as well as local WINGS history on each candidate to determine whether the candidate’s continued presence in the U.S. outweighs the need to remove him/her. The Coordinator will contact CCSO elements (CID, CIB and VNB) to ensure that the candidate is not currently a witness in a criminal case, an active confidential informant or otherwise involved in an active case. In addition, the TF coordinator or full-time CATF member will utilize the federal immigration databases in order to locate any pertinent immigration history. The Coordinator will then collect all of the packets review them for errors and send them to the designated ICE supervisor/coordinator for review in accordance with the supervision requirement of the Memorandum of Agreement. This process will prevent TF members from arresting subjects that would not meet ICE standards (constitutional, statutory or policy).<sup>125</sup> ***No arrests will be made until the candidate is approved by ICE.***

The ICE Coordinator will be asked to review the packets for each candidate including the alleged offenses, the sufficiency of the evidence and to identify any potential problems. If the ICE Coordinator approves the candidate for deportation/removal, the ICE Coordinator will send the file back to the TF Coordinator marked “approved”. The TF Coordinator will maintain a list of criminal aliens approved for deportation/removal. The TF Coordinator will arrange for all “approved” candidates to be entered into WINGS as an “Immigration Hit”. By adding this field, an alert will show whenever the subject is

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<sup>125</sup> The OIR is the only form sufficient to collect all of the information necessary. The ICE coordinator must be able to review the reason for the initial contact and any evidence, statements or otherwise, made that would prove alienage. The OI also serves to provide a CCSO record of the subject and his alienage.

run (similar to “career felony offender”, “S.H.O.C.A.P.”, “protection order”, etc.). If a suspect returns as a hit, the contacting deputy should contact an on-duty TF member. Although only the designated TF members can physically make the arrest, any Law Enforcement Officer can detain one of the candidates briefly until the TF member arrives or is directed to transport the candidate to another location by a T.F. member.

The TF Coordinator will be responsible for developing and coordinating an apprehension strategy. Once an approved candidate has been located and, if probable cause exists, arrested<sup>126</sup>, the TF member will then complete the “A-File” paperwork as required by ICE policy/statute.

The TF members will be required to coordinate any immigration enforcement operations with the TF Coordinator, thus ensuring the TF Coordinator maintains centralized control in order to monitor and coordinate county-wide efforts.

### **Phases II and III**

When the cases involving violent criminal aliens have been substantially exhausted, the TF Coordinator will request authorization of the Sheriff or his designee, through the chain of command, to move to the next phase (II or III) of this strategy. Though each phase has its individual focus, TF members will continue to investigate all criminal alien leads with the approval of the TF coordinator. Priority will always be given to the most serious and violent offenders. All activity and investigations will be conducted in conformity with the Memorandum of Agreement. The modified FI forms as well as the procedures each TF member will follow in order to document the immigration status of persons of interest will be implemented immediately.

One of the goals of each TF member is to determine the immigration status of all criminal persons of interest in order to determine whether or not the



subject is a candidate for removal. Although the individual TF members will likely collect the majority of data on specific persons of interest, the assistance of agency members will accelerate the process as well as introduce new candidates to the TF members. The responsibility of each Task force member, while performing TF duties, will be directed towards reviewing, verifying and documenting the immigration status of each criminal person of interest within that member's area of expertise (For instance, gang TF members will document the status of documented gang members and S.E.T. TF members will document criminal aliens within their district, etc.).

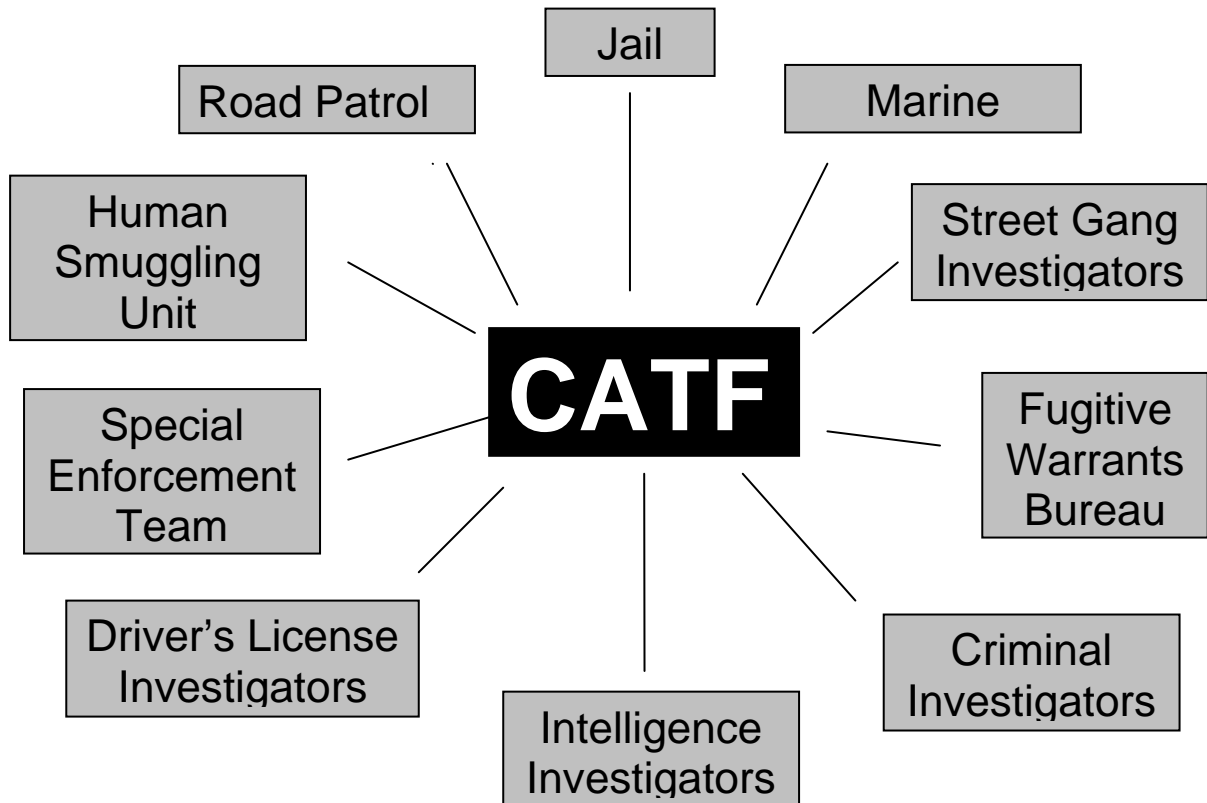
At each District/Bureau where TF members operate, a separate TF FI basket should be added. As FI forms completed by agency members are entered by the district CRI, the CRI should identify any FI forms which have documented the subject as a *non*-U.S. National/Citizen. These FI forms should be photocopied with the copy placed in the TF F.I. basket. In addition, another copy of the F.I. should be sent to the TF Coordinator. In order to increase efficiency, the FI forms sent to *the Coordinator* may be sent weekly via interoffice envelope.

By having a centralized and unified procedure for the documentation and dissemination of information, all TF members will be familiar with the immigration status of those criminal persons of interest operating in their area, as well as have access, through the coordinator, to the FI forms of those persons of interest operating in another area of the county. As a TF member makes contact with a new person of interest, that TF member should contact the coordinator and request any FI forms already documenting that subject's immigration status.

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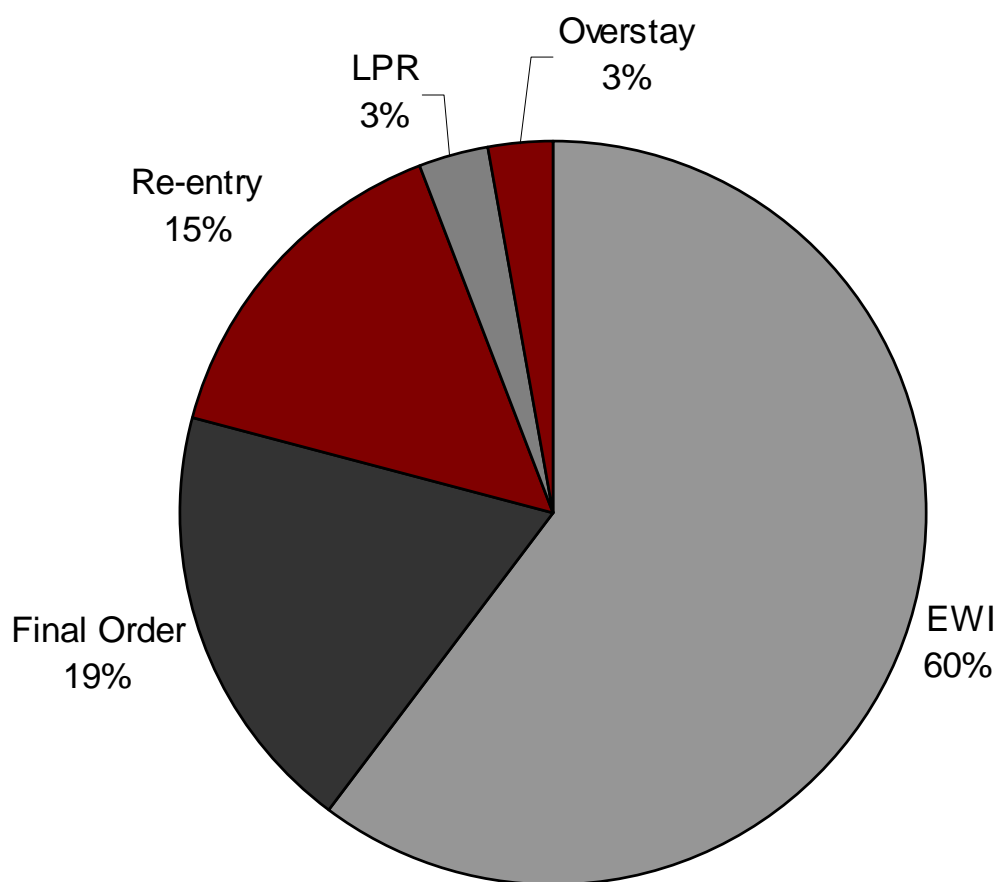
<sup>126</sup> When the TF member initially submits the candidate OI to the TF coordinator, probable cause for an arrest may not exist until the candidate's immigration and criminal history is reviewed by the coordinator and ICE officials and illegal status is confirmed. At the point where a TF member makes contact with an "approved candidate," the TF member may or may not need to further interview the candidate to establish probable cause.

## APPENDIX E.



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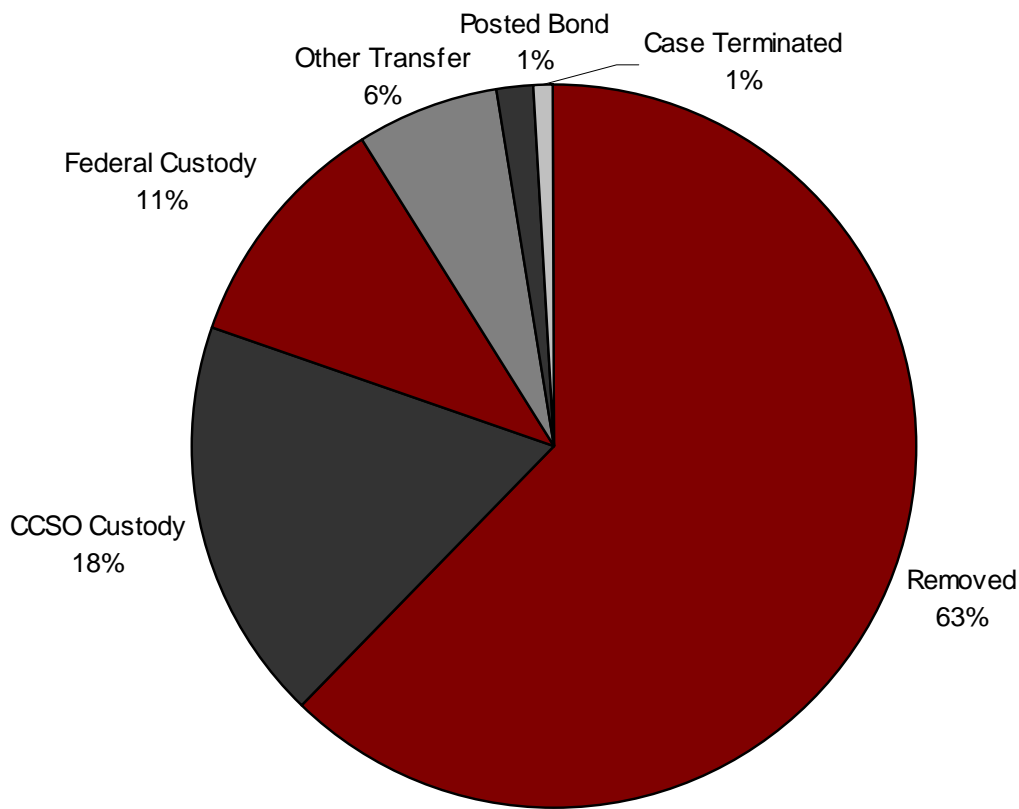
## APPENDIX F.



<u>Detainers Placed for Removal</u>	<u>No.</u>
Entry without Inspection (EWI)	628
Final Orders	197
Re-Entries	157
Legal Permanent Resident (LPR)	31
Overstays (expired Visas)	29
Asylum	1
<b>Total Detainers Placed</b>	<b>1,043*</b>

\*37 detainers for removal lifted for a combined total of 1,080

**APPENDIX G.**



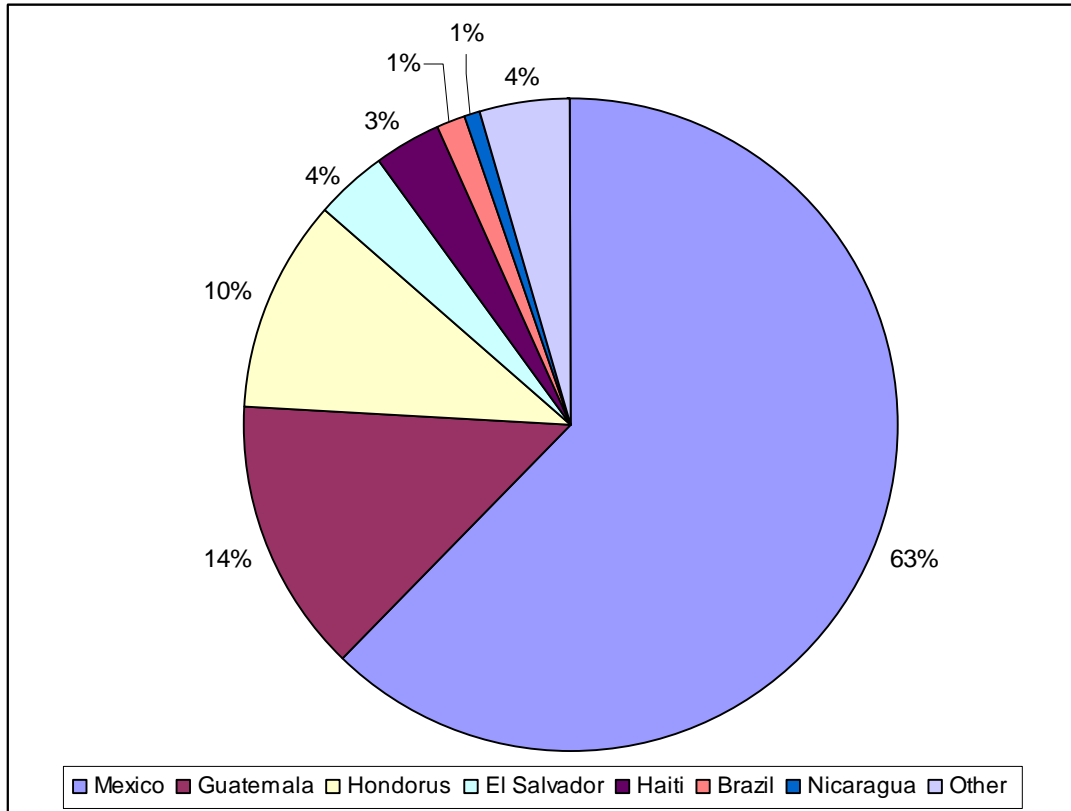
<u>Status of Detained Criminal Aliens</u>	<u>No.</u>
Removed from the U.S.	646
In Collier County Custody	190
In ICE or U.S. Marshal Custody	112
Transferred to Other Facilities	67
Posted Immigration Bond	15
Case Terminated	10
Order of Supervision	3
Total Cases	1,043

## APPENDIX H.

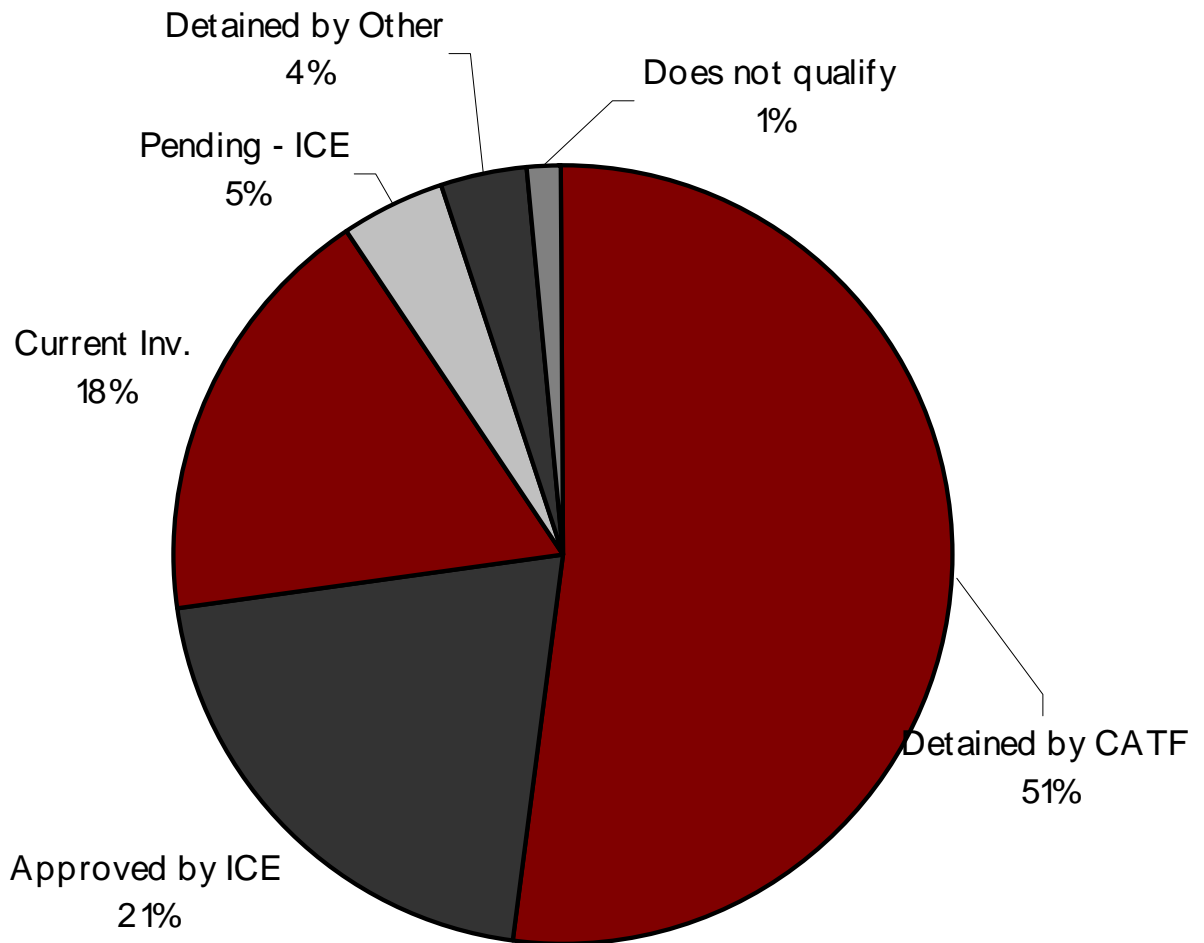
### Corrections–Countries for Detainers (October 1, 2007–December 31, 2008)

Country	Number	Percentage
Mexico	647	62.0%
Guatemala	144	13.8%
Honduras	108	10.4%
El Salvador	40	3.8%
Haiti	34	3.3%
Brazil	14	1.3%
Nicaragua	9	0.9%
Bahamas	5	0.5%
Belize	5	0.5%
Albania	4	0.4%
Colombia	4	0.4%
Uruguay	4	0.4%
Bolivia	3	0.3%
Costa Rica	3	0.3%
Cuba	3	0.3%
Jamaica	3	0.3%
Hungary	2	0.2%
Peru	2	0.2%
South Africa	2	0.2%
Argentina	1	0.1%
Dominican Republic	1	0.1%
Ecuador	1	0.1%
Russia	1	0.1%
United Kingdom	1	0.1%
Uzbekistan	1	0.1%
Venezuela	1	0.1%
<b>Total</b>	<b>1043</b>	<b>100.0%</b>





## APPENDIX I.



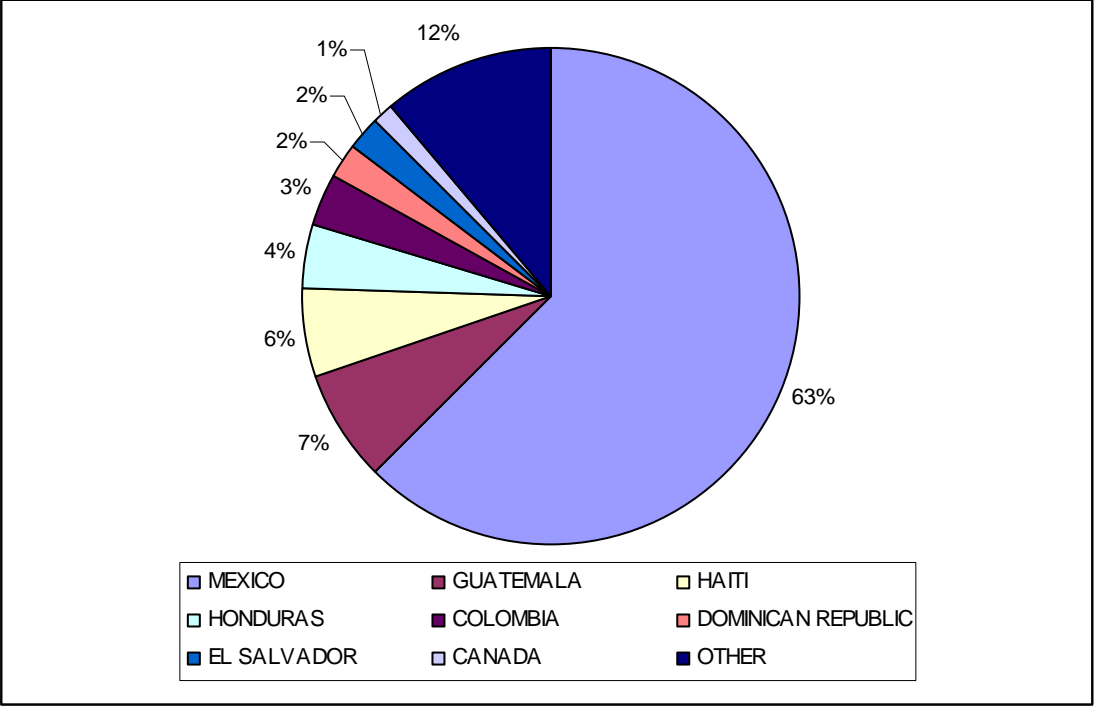
<u>Investigations–Status</u>	<u>No.</u>
Approved by ICE–detained by CATF	114
Approved by ICE–not yet located by CATF	46
Current Investigation	39
Pending ICE Approval	10
Detained by Other Agency	8
Does not qualify for removal	3
<b>Total Investigations</b>	<b>220</b>

## APPENDIX J.

### Investigations–Countries for Detainers (October 1, 2007–December 31, 2008)

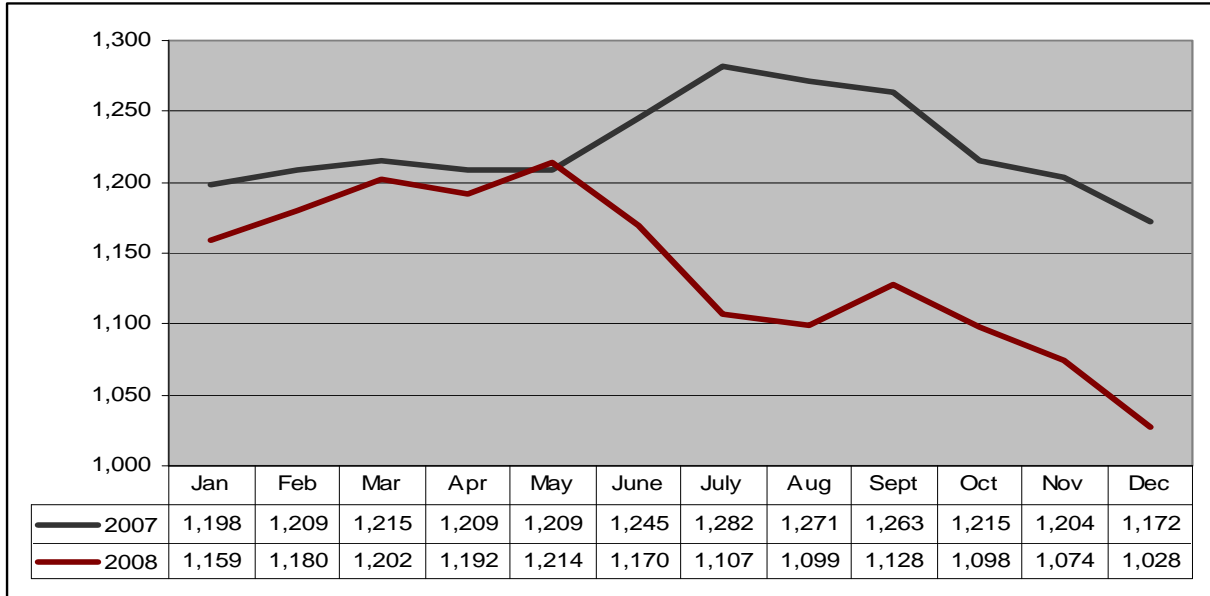
Country	Frequency	Percent
Mexico	136	62.7%
Guatemala	16	7.3%
Haiti	13	6.0%
Honduras	9	4.1%
Colombia	7	3.2%
Dominican Republic	5	2.3%
El Salvador	5	2.3%
Canada	3	1.4%
Bahamas	2	0.9%
Brazil	2	0.9%
Jamaica	2	0.9%
Venezuela	2	0.9%
Bangladesh	1	0.5%
Bolivia	1	0.5%
Czech Republic	1	0.5%
Hungary	1	0.5%
Israel	1	0.5%
Jordan	1	0.5%
Kazakhstan	1	0.5%
St. Lucia	1	0.5%
Nicaragua	1	0.5%
Panama	1	0.5%
Poland	1	0.5%
Peru	1	0.5%
Rumania	1	0.5%
Uzbekistan	1	0.5%
Malaysia	1	0.5%
Surinam	1	0.5%
<b>Total</b>	<b>218</b>	<b>100%</b>

\*Two Cases Missing from country table for a total of 220 investigations

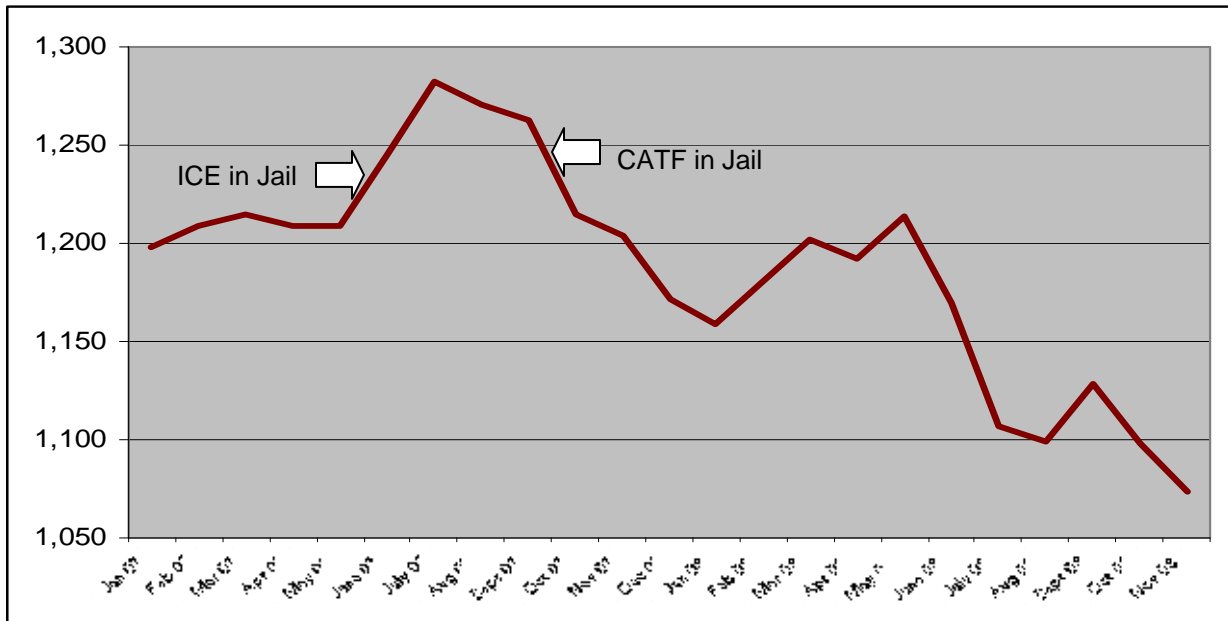


## APPENDIX K.

Collier County Average Daily Jail Population Comparison by Month, 2007 -2008



Collier County Average Daily Jail Population, 2007-2008



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## APPENDIX L.

### Countries of Origen



<b>Albania</b>	<b>Costa Rica</b>	<b>Iran</b>	<b>Russia</b>
<b>Argentina</b>	<b>Cuba</b>	<b>Israel</b>	<b>Scotland</b>
<b>Australia</b>	<b>Czech Republic</b>	<b>Jamaica</b>	<b>Slovakia</b>
<b>Bahamas</b>	<b>Dominican Republic</b>	<b>Jordan</b>	<b>South Africa</b>
<b>Bangladesh</b>	<b>Ecuador</b>	<b>Kazakhstan</b>	<b>South Korea</b>
<b>Belize</b>	<b>El Salvador</b>	<b>Mexico</b>	<b>St. Lucia</b>
<b>Bolivia</b>	<b>England</b>	<b>Nicaragua</b>	<b>Thailand</b>
<b>Brazil</b>	<b>Germany</b>	<b>Nigeria</b>	<b>Trinidad &amp; Tobago</b>
<b>Bulgaria</b>	<b>Guatemala</b>	<b>Panama</b>	<b>Turkey</b>
<b>Canada</b>	<b>Haiti</b>	<b>Peru</b>	<b>Turks &amp; Caicos</b>
<b>Chile</b>	<b>Honduras</b>	<b>Philippines</b>	<b>Uruguay</b>
<b>China</b>	<b>Hungary</b>	<b>Poland</b>	<b>Venezuela</b>
<b>Colombia</b>	<b>India</b>	<b>Romania</b>	<b>Vietnam</b>



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## APPENDIX M.

### MECKLENBURG COUNTY SHERIFF'S OFFICE / ARREST PROCESSING

#### Annual Totals 2007

# Inmates Interviewed	3641
# Inmates Processed	2321
Detainers Lodged	2297
203's Lodged	2003
of the # Processed:	
<b>CRIMINAL (MANDATORY DETENTION)</b>	
851 Agg. Felon	18
862 NTA	357
871 Re-Entry	143
B&B Ordered Deported	155
<b>NON CRIMINAL (NON-MANDATORY DETENTION) EWI</b>	
862 NTA	1633
VR	13
<b>Charges</b>	
DWI	524
Drugs	148
Robbery	9
Sex Crimes	50
Assault	226
DV	11
ICE Arrest	0
Traffic	758
Fraud	4
Alcohol / D&D	59
Theft	61
B&E	50
Tresspass	18
Other	401
<b>Misdemeanors</b>	<b>2008</b>
<b>Felonies</b>	<b>193</b>

T Files  
Outstanding  
State Pending NOT yet  
Processed (NO 213 turned in)  
Total placed in  
Removal  
Proceedings

11
97
2429

State  
Pending File  
Drawer

192

# MECKLENBURG COUNTY SHERIFF'S OFFICE / ARREST PROCESSING

## Annual Totals

**2008**

# Inmates Interviewed	<b>3433</b>
# Inmates Processed	<b>2251</b>
Detainers Lodged	<b>2257</b>
203's Lodged	<b>1959</b>
<b>of the # Processed:</b>	
<b>CRIMINAL (MANDATORY DETENTION)</b>	
851 Agg. Felon	<b>24</b>
862 NTA	<b>157</b>
871 Re-Entry	<b>181</b>
B&B Ordered Deported	<b>178</b>
<b>STIP</b>	<b>485</b>
<b>NON CRIMINAL (NON-MANDATORY DETENTION) EWI</b>	
862 NTA	<b>585</b>
<b>VR</b>	<b>635</b>
<b>Charges</b>	
DWI	<b>617</b>
Drugs	<b>170</b>
Robbery	<b>17</b>
Sex Crimes	<b>54</b>
Assault	<b>200</b>
DV	<b>5</b>
Resist	<b>81</b>
Traffic	<b>634</b>
Fraud	<b>9</b>
Alcohol / D&D	<b>63</b>
Larceny	<b>94</b>
B&E	<b>50</b>
Tresspass	<b>24</b>
Other	<b>233</b>
<b>Misdemeanors</b>	<b>1942</b>
<b>Felonies</b>	<b>235</b>

State Pending NOT yet  
Processed (NO 213 turned  
in)  
Total placed in  
Removal  
Proceedings

State Pending  
File Drawer

# MECKLENBURG COUNTY SHERIFF'S OFFICE / ARREST PROCESSING

## Annual Totals

**2009**

# Inmates Interviewed	292
# Inmates Processed	172
Detainers Lodged	175
203's Lodged	142
of the # Processed:	
CRIMINAL (MANDATORY DETENTION)	
851 Agg. Felon	2
862 NTA	40
871 Re-Entry	19
B&B Ordered Deported	10
STIP	17
NON CRIMINAL (NON-MANDATORY DETENTION) EWI	
862 NTA	21
VR	63
Charges	
DWI	45
Drugs	7
Robbery	2
Sex Crimes	0
Assault	15
DV	0
Resist	7
Traffic	61
Fraud	1
Alcohol / D&D	2
Larceny	11
B&E	0
Tresspass	2
Other	18
Misdemeanors	155
Felonies	16

T Files Outstanding  
State Pending NOT yet Processed (NO 213 turned in)  
Total placed in Removal Proceedings

24

68

264

State Pending File Drawer 154



**MECKLENBURG COUNTY SHERIFF'S  
OFFICE  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT**



<b>INMATES RECEIVED</b>		<b>9650</b>
Total number of inmates charged and brought into the MCJ that are non U.S. born.		

<b>INMATES PROCESSED FOR REMOVAL</b>		<b>5869</b>
Of the Inmates Received / Total number of inmates that were placed in removal proceedings.		

<b>Prior Deports</b>	<b>Re-Entries</b>	<b>420</b>
Of Inmates Processed / Total number that were previously removed and re-entered in the U.S..		

<b>Outstanding Warrant for Removal</b>	<b>B&amp;B</b>	<b>410</b>
Of Inmates Processed / Total number that were previously ordered removed but remained in the U.S..		

**Reasons why some inmates interviewed were not processed:**

- |   |                                      |   |
|---|--------------------------------------|---|
| 1 | <b>LAPR (Green Cards)</b>            | Inmates are Lawfully Admitted                                       |
| 2 | <b>TPS (Temp. Protective Status)</b> | Permanent Residents   |
| 3 | <b>Naturalized U.S. Citizen</b>      | Inmates are allowed to remain in U.S. temp. under protective status |
| 4 | <b>Non-Immigrant VISA</b>            | Inmates Naturalized and became a U.S. Citizen.                      |
| 5 | <b>Approved Asylum</b>               | Inmates are lawfully in U.S. as a temporary visitor.                |
| 6 | <b>Refugee</b>                       | Inmates granted Asylum and can apply for LAPR.(Green Card)          |
|   |                                      | Inmate was lawfully admitted into U.S. as a refugee. (LAPR)         |

Of the **5869** processed **1422** Were arrested for DWI









































## APPENDIX N.



































### Mecklenburg County Sheriff's Office Immigration & Customs Enforcement



#### Countries of Aliens Processed

		2006		2007		2008		2009	
	Mexico	668	69.2%	1517	65.4%	1473	65.4%	106	61.6%
	Honduras	146	15.1%	394	17.0%	387	17.2%	34	19.8%
	El Salvador	49	5.1%	165	7.1%	140	6.2%	10	5.8%
	Guatemala	43	4.5%	107	4.6%	118	5.2%	7	4.1%
	Brazil	5	0.5%	19	0.8%	11	0.5%	1	0.6%
	Ecuador	5	0.5%	9	0.4%	13	0.6%	1	0.6%
	Nicaragua	8	0.8%	9	0.4%	19	0.8%	1	0.6%
	Nigeria	4	0.4%	2	0.1%	2	0.1%		0.0%
	Colombia	5	0.5%	7	0.3%	5	0.2%	3	1.7%
	Uruguay	1	0.1%	1	0.0%	2	0.1%		0.0%
	UK	1	0.1%	3	0.1%	1	0.0%	1	0.6%
	Dom. Republic	2	0.2%	5	0.2%	6	0.3%	1	0.6%
	Panama	1	0.1%	2	0.1%	1	0.0%		0.0%
	Canada	1	0.1%	2	0.1%	1	0.0%	1	0.6%
	Congo	4	0.4%	4	0.2%	4	0.2%	2	1.2%
	Zambia	1	0.1%		0.0%		0.0%		0.0%
	Chile	2	0.2%		0.0%	2	0.1%	1	0.6%
	Peru	4	0.4%	8	0.3%	10	0.4%		0.0%
	Trinidad	1	0.1%	3	0.1%	1	0.0%		0.0%
	Africa	1	0.1%	2	0.1%	2	0.1%		0.0%
	Haiti	1	0.1%		0.0%	1	0.0%		0.0%
	Venezuela	1	0.1%	7	0.3%	1	0.0%		0.0%
	Bosnia	1	0.1%	1	0.0%		0.0%		0.0%
	Costa Rica	2	0.2%	10	0.4%	10	0.4%		0.0%
	China	2	0.2%	4	0.2%	1	0.0%	1	0.6%
	Korea	1	0.1%	1	0.0%	1	0.0%		0.0%
	Liberia	2	0.2%	2	0.1%	1	0.0%	1	0.6%
	Thiafand	1	0.1%		0.0%		0.0%		0.0%
	Cambodie	1	0.1%		0.0%	1	0.0%		0.0%
	Niger	1	0.1%		0.0%		0.0%		0.0%
	Lebanon	1	0.1%		0.0%		0.0%		0.0%
	Ghana			3	0.1%		0.0%		0.0%
	Gambia			2	0.1%	2	0.1%		0.0%
	Argentina			1	0.0%	3	0.1%		0.0%
	Russla			1	0.0%		0.0%		0.0%
	Spain			1	0.0%		0.0%		0.0%
	Ivory Coast			2	0.1%		0.0%		0.0%
	Paraguay			1	0.0%		0.0%		0.0%
	Czech Republic			1	0.0%	2	0.1%		0.0%
	Bulgaria			1	0.0%		0.0%		0.0%



	Sierra Leone	2	0.1%	2	0.1%		0.0%
	Laos	1	0.0%		0.0%		0.0%
	Mali	2	0.1%		0.0%		0.0%
	Poland	1	0.0%		0.0%		0.0%
	Barbados	1	0.0%		0.0%		0.0%
	Ethiopia	1	0.0%		0.0%		0.0%
	India	2	0.1%		0.0%		0.0%
	Cuba	1	0.0%	1	0.0%		0.0%
	St. Lucia	1	0.0%	1	0.0%		0.0%
	Romania	1	0.0%		0.0%		0.0%
	Vietnam	2	0.1%	1	0.0%		0.0%
	Malaysia	1	0.0%		0.0%		0.0%
	Jordan	1	0.0%	4	0.2%		0.0%
	Togo	2	0.1%		0.0%		0.0%
	Sudan	1	0.0%		0.0%		0.0%
	Yemen	1	0.0%		0.0%		0.0%
	Turkey	1	0.0%		0.0%		0.0%
	Saudi Arabia	1	0.0%		0.0%		0.0%
	Senegal	1	0.0%	2	0.1%		0.0%
	Jamaica			7	0.3%		0.0%
	Italy			2	0.1%		0.0%
	Guyana			1	0.0%		0.0%
	Morocco			1	0.0%		0.0%
	Indonesia			1	0.0%		0.0%
	Angola			1	0.0%		0.0%
	Iran			1	0.0%		0.0%
	Cape Verde			1	0.0%		0.0%
	Croatia			1	0.0%		0.0%
	Bolivia			2	0.1%		0.0%
	Somalia			1	0.0%		0.0%
	Belize			1	0.0%		0.0%
	Kenya					1	0.6%

Total 2006	966
Total 2007	2321
Total 2008	2252
Total 2009	172
GRAND	5539

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